TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 265

JAMES HICKMAN, PLAINTIFF IN ERROR,

vs.

EDWARD C. BETTS, THOMAS S. McCALLEY, SAMUEL COLTART ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED FEBRUARY 20, 1863.

SUPREME COURT OF THE UNITED STATES.

No. 263.

JAMES HICKMAN, PLAINTIFF IN ERROR,

vs.

EDWARD C. BETTS, THOMAS S. McCALLEY, SAMUEL COLTART ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	1
Bond	5	2
Declaration	8	3
Summons	15	6
Demurrer	18	8
Joinder in demurrer	19	8
Judgment on demurrer	20	9
Amended declaration	21	9
Pleas	23	10
Demurrers	25	11
Jury empannelled	27	12
Verdict	31	14
Bill of exceptions	31	15
Bond	128	54
Copy of writ of error	130	55
Copy of citation	131	56
Clerk's certificate	134	57

1 UNITED STATES OF AMERICA, *ss:*

The President of United States to the judge of the District Court of the United States for the northern district of Alabama, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment of a plea which is in the said court before you, between James Hickman, and Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, James M. Mastin, William Larkin, Enoch Aldridge, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, a manifest error hath happened, to the great damage of the said James Hickman, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may
2 have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and acoording to the laws and customs of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of the said Supreme Court, the 27th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] LIONEL W. DAY,
Clerk of the District Court for the Northern District of Alabama.

Endorsed: James Hickman *vs.* Edward C. Betts, and others. Writ of error.

3 UNITED STATES OF AMERICA, *ss*:

To Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, James M. Mastin, William Larkin, Enoch Aldrige, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the northern district of Alabama, wherein James Hickman is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of

4 the said Supreme Court of the United States, this 27th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

RICHARD BUSTEED,
Judge of the District Court for the Northern District of Alabama.

Endorsed: James Wickman *vs.* Edward C. Betts and others. Citation for writ of error. Edward E. Douglass, marshal for the northern district of Alabama, makes oath that he secured the within citation for writ of error in the case of James Hickman *vs.* Edward C. Betts and others, and that he, on this 27th day of November, 1867, delivered a true copy of the same to Richard W. Walker and George A. Gordon, counsel for the defendants. E. E. Douglass. Subscribed and sworn to 27 Nov., 1867. Lionel W. Day, cl'k D. C.

5 Know all men by these presents, that we, James Hickman, of the city of Nashville and State of Tennessee, and Edward E. Douglass and Christopher C. Shuts, citizens of the State of Alabama, are held and firmly bound unto Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, James M. Mastin, William Larkin, Enock Aldrige, Samuel Elliott, Willlam Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, in the sum of two thousand dollars, to be paid to the said Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, James M. Mastin, William Larkin, Enoch Aldrige, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, their executors or administrators, to which payment, to be well, truly made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 27th day of November, in the year one thousand eight hundred and sixty-seven.

6 Whereas the above-named James Hickman hath prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment in a certain suit wherein the said James Hickman is the plaintiff, and the said Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, James M. Mastin, William Larkin, Enoch Aldrige, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, are the defendants, in the District Court of the United States for the northern district of Alabama, at Huntsville:

Now, therefore, the condition of this obligation is such, that if the above-named James Hickman shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in the presence of, and given under our hands, and this the day and date above written.

[SEAL.] JAMES HICKMAN.
[SEAL.] C. C. SHUTS.
[SEAL.] EDWARD E. DOUGLASS.

Subscribed in the presence of—
LIONEL W. DAY, *Cl'k U. S. Dist. Court.*

I approve of the form and sufficiency of this bond.
Nov. 27, '67.

RICH'D BUSTEED, *Judge.*

Endorsed: No. 152. James Hickman *vs.* Ed. C. Betts *et als.* Bond for appeal. Filed the 27 day of Nov., 1867, in the cl'k's office for nor. dist. of Alabama. Lionel W. Day, cl'k D. C.

7 Pleas had at a District Court of the United States of America for the northern district of the State of Alabama, begun and held at the court-house, in the city of Huntsville, in said district, on the third Monday (being the eighteenth day) of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Richard Bustead, judge of said district court.

Be it remembered, that heretofore, to wit, on the 19th day of March, A. D. 1866, came James Hickman, by his attorney, and filed his declaration in words and figures as follows, to wit:

8 In the District Court of the United States of America for the northern district of the State of Alabama, sitting at Huntsville, May term, 1866.

JAMES HICKMAN
vs.
EDWARD C. BETTS, THOMAS S. MCCALLEY, and others.

The plaintiff, James Hickman, who is a citizen of the State of Tennessee, claim of the defendants, Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, S. W. Harris, James H. Mastin, William Larkin, Enoch Aldridge, A. W. Arnold, James Woodruff, Samuel Elliott, William Griffin, William G. Jones, Requier, B. T. Moore, R. W. Coltart, and J. Withers Clay, who are in court by summons, &c., and who are citizens of the said State of Alabama, residing in the said northern district thereof, and within the jurisdiction of this court, the sum of one hundred thousand dollars, as damages, for maliciously and without probable cause, having and causing him, the said plaintiff, to be arrested, imprisoned, indicted, and tried on the supposed charge of treason to the late so-called "Confederate States of America," at the city of Huntsville, Madison county, in said State of Alabama, and in the dis-

trict aforesaid, on the day of , in the year one thousand eight hundred and sixty-three, &c., of or from which said indictment and charge the said plaintiff was then and there acquitted and discharged, to the damage of the said plaintiff one hundred thousand dollars, and therefore he sueth.

And the said plaintiff, James Hickman, who is a citizen as aforesaid, claims of the said defendants last above mentioned, who are citizens and residents as aforesaid, the further sum of one hundred thousand dollars as damages:

For that whereas the said defendants, contriving and maliciously intending to injure the said plaintiff, and to cause him to be imprisoned and kept and detained in prison, and to put him to great charge and expense of his moneys, and to confiscate and take away from him his property and effects, and to put him in great peril of losing his life by being hung, and to vex, harass, oppress, impoverish, and wholly ruin him, the said plaintiff, heretofore, to wit, on the day of , 1863, at, &c., in the district aforesaid, falsely and maliciously, at, &c., and without any reasonable or probable cause whatsoever, arrested and caused and procured to be arrested him, the said plaintiff, and then and there to be held to answer for the supposed crime of treason against the so-called "Confederate States," on, &c., before the judge of the District Court of the so-called "Confederate States" aforesaid for the northern district of the said State of Alabama, to be holden at the said city of Huntsville on the day of , 1863, and to continue in session from day to day, which said District Court of the so-called "Confederate States" assumed to and did try and punish the alleged crime of treason, and other alleged offences against the said so-called "Confederate States," alleged to be committed within said northern district aforesaid; and the said plaintiff further says, that the said defendants afterwards, on the day of , 1863, at, &c., aforesaid, falsely and maliciously, and without reasonable or probable cause whatsoever, indicted and caused and procured him, the said plaintiff, to be indicted, in and before the said District Court of the so-called "Confederate States," for the supposed crime of treason against the said so-called "Confederate States;" and the said plaintiff further says, that the said defendants falsely and maliciously, and without reasonable or probable cause whatever, prosecuted, and caused, procured, and incited to be prosecuted, the said indictment against him, the said plaintiff, to wit, at the city of Huntsville aforesaid, until the said plaintiff afterwards, to wit, on the day of , 1863, before the said District Court of the so-called "Confederate States" for the said northern district aforesaid, was, according to the cause of proceedings of said supposed court, by a jury of said northern district, acquitted of the matters and things in the said indictment charged against him, the said plaintiff, in manner aforesaid; whereupon it was then and there considered in and by the said District Court that the said plaintiff of the matters and things in said indictment specified should be discharged and should go without day, as by the record and proceedings remaining

in the said court, reference being thereunto had, will more fully appear. By means of which said premises, he, the said plaintiff, has been forced and obliged to undergo, and has undergone, many great troubles and labors, both of body and mind, and to lay out and expend divers large sums of money, to wit, the sum of thousand dollars, in and about defending himself in the premises, and the manifestation of his innocence therein, and has been imprisoned and kept and detained in prison, and confined in jail for a great length of time, to wit, for the space of five months, and has been put in great peril of losing his life and his property and effects; and the said plaintiff was also, by means of the premises, greatly hindered and prevented from transacting his necessary and lawful affairs and business, for divers long spaces of time, and has been, and is, grealy injured and damnified, and very much injured, to wit, at, &c., aforesaid.

And the said plaintiff, James Hickman, citizen as aforesaid, claims from the said defendants, citizens and residents as aforesaid, the further sum of one hundred thousand dollars as damages :

For that whereas before and at the time of the committing of the grievances by the said defendants next hereinafter mentioned, the said State of Alabama, and a majority of the people thereof, and ten other States, and a majority of the people thereof, being States
12 and citizens of, and owing true fidelity, loyalty, and allegiance to the government of the United States of America, had rebelled, and were then engaged in waging a civil war against the said government of the United States and the loyal States thereof, and that the said rebellious and insurrectionary States, and their people, in furtherance and promotion of civil war and rebellion, (v) had assumed to organize, and were then actually organized under a government known as the "Confederate States of America," and that the said government of the "Confederate States of America," for the same illegal and unlawful purpose and intent, had assumed to organize, and had in fact organized and constituted with other courts a District Court for the northern district of the said State of Alabama, and had assumed to authorize said District Court to try and punish all supposed crimes and offences against the said so-called "Confederate States" within said northern district, and had assumed to appoint and commission defendant, William Jones, judge of said court, who was acting as such judge at the time of the committing of the grievances next hereinafter mentioned, all of which actings and proceedings were utterly null and void, and in direct violation of the fidelity, loyalty, and allegiance of said States, and the people thereof, to the said government of the United States.

And whereas the said defendants, further contriving and in-
13 tending as aforesaid, and to aid and abet said rebellion against the government of the United States, heretofore, to wit, on the day of , 1863, at Huntsville, in the said northern district of the State of Alabama, maliciously and without and reasonable or probable cause arrested, and caused and procured to be arrested and imprisoned and confined in jail, him, the said plaintiff;

and afterwards, to wit, on the day of , 1863, at, &c., aforesaid, indicted, and caused and procured to be indicted, him, the said plaintiff, in and before the said District Court and the judge thereof, at the city of Huntsville aforesaid, for the supposed crime of treason against the so-called "Confederate States;" and the said plaintiff further says, that the said defendants, further contriving and intending as aforesaid, falsely and maliciously, and without any reasonable or probable cause prosecuted, and caused and procured to be prosecuted, the said last-mentioned pretended indictment against him, the said plaintiff, at, &c., aforesaid, in and before the said pretended District Court, until the said plaintiff afterwards, to wit, on the day of , 1863, at, &c., aforesaid, was, by a jury of said northern district acquitted of the matters and things in the said pretended indictment charged against him as aforesaid, and the said plaintiff was then and there discharged and set at liberty; by
14 means of which said last-mentioned premises the said plaintiff has been forced and compelled to expend large sums of money, to wit, the sum of thousand dollars, in and about defending himself against such unjust and illegal prosecution; has undergone many great hardships, troubles, and labors, both of body and mind; has been imprisoned and confined in jail for a long space of time, to wit, for the space of days; has been put in great peril of losing his life, his liberty, and his property and effects; has been greatly hindered and prevented from attending to and transacting his lawful affairs and business, for divers long spaces of time, and has been and is otherwise very much injured and damaged, to wit, at, &c., aforesaid.

Wherefore the said plaintiff says that he is injured and has sustained damages to the amount of one hundred thousand dollars, and therefore he brings his suit, &c.

GANT, SMITH & STOKES,
Attorneys for Plaintiffs.

15 And afterwards, to wit, on the 19th day of March, 1867, there was issued from the clerk's office of said district a summons in words and figures as follows, to wit:

DISTRICT COURT OF THE UNITED STATES
For the Northern District of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to summon Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Matthews, John W. Cooper, S. W. Harris, James H. Mastin, William Larkins, Enoch Aldridge, A. W. Arnold, James Woodruff, Samuel Elliott, William Griffin, William G. Jones, Requier, B. T. Moore, R. W. Coltart, and J. Withers Clay, who are citizens of the State of Alabama, to be and appear before the honorable the judges of said court, at the place of holding the court, at Huntsville, on the third Monday of May next, to answer the

complaint of James Hickman, who is a citizen of the State of Tennessee, in a plea of trespass on the case to plaintiffs, damages one hundred thousand dollars; herein fail not to have then and there this writ.

Witness the Honorable Richard Busteed, judge of the said court, third Monday of November, in the year of our Lord one thousand eight hundred and sixty-five.

16 Issued the 19th day of March, in the year one thousand eight hundred and sixty-five.

Attest: LIONEL W. DAY,
Clerk D. C. Northern Dist. of Alabama.

Summons filed May 10th, 1866.

LIONEL W. DAY,
Clerk D. C.

The marshal's return was as follows, to wit:

"Executed on the 23rd of March, 1866, on R. W. Coltart, Samuel Matthews, James H. Mastin, John W. Cooper, S. W. Harris, William Larkin. Executed on Thomas S. McCalley, Samuel Coltart, B. T. Moore, and J. Withers Clay, by leaving copy April 2d, 1866; and on E. C. Betts, April 11th, 1866, by leaving copy of summons and complaint. Executed April 28th, 1866, on James Woodruff by leaving copy of summons and complaint. Executed on Samuel Elliott, April 27th, 1866, by leaving copy of summons and complaint. Executed April 23rd, 1866, on William Griffin and Enoch Aldrige, by leaving with them a copy of summons and complaint.

"E. E. DOUGLASS,
"*Marshal for the Northern Distriet of Alabama.*"

And afterwards, to wit, on the 20th day of August, 1866, there ssued from the clerk's office of said district an alias summons in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *District Court of the United States for the Northern District of Alabama:*

17 The President of the United States to the marshal of southern district, greeting:

You are hereby commanded, as you have heretofore been commannded, to summon William G. Jones, &c., who are citizens of the State of Alabama, to be and appear before the honorable the judge of the said court, at the place of holding said court, at Huntsville, on the third Monday of November next, to answer to the complaint of James Hickman, who is a citizen of the State of Tennessee, in a plea of trespass on the case to the plaintiff's damage one hundred thousand dollars.

Herein fail not to have then and there this writ.

Witness the Honorable Richard Busteed, judge of the said court,

third Monday of May, in the year of our Lord one thousand eight hundred and sixty-six.

Attest: LIONEL W. DAY,
Clerk D. C. Nor. District of Alabama.

Endorsed: Filed 23 Nov., 1866. L. W. Day, cl'k. Returned by the marshal as follows: Executed by serving copy of within upon W. G. Jones, Oct. 12, 1866. John Hardy, Marshal.

And thereafter, to wit, on the 21st day of November, 1866, come the defendants, by attorney, and filed their demurrer to plaintiff's complaint in words and figures as follows, to wit:

18 District Court United States, Northern District of Alabama, Nov. term, 1866.

JAMES HICKMAN
vs.
E. C. BETTS *et als.*

The defendants, Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Matthews, John W. Cooper, S. W. Harris, James H. Mastin, William Larkin, Enoch Aldrige, James Woodruff, Samuel Elliott, William Griffin, Robert W. Coltart, and J. Withers Clay, by their attorneys, come and defend, &c., and demur to said complaint; and for cause of demurrer set down the following:

1st. The said complaint is not sufficient in law for the plaintiff to have or maintain his action against the defendants.

2nd. In the first count of the complaint the plaintiff has declared and complained against defendants in a plea of trespass, while in the second and third counts he has declared and complained in an action on the case.

3rd. For that plaintiff has joined a count in trespass for false imprisonment with counts in case for malicious prosecution. And this defendants are ready to verify, wherefore they pray judgment, &c.

ROBINSON WALKER,

In testimony whereof the said Joseph Nock hath hereto set his
BIERNE GORDON,
For Defendants.

19 And thereafter, to wit, on the same day, come the plaintiff and files his joinder in demurrer, in words and figures as follows, to wit:

District Court United States nor. dist. of Alabama, November term, 1866.

JAMES HICKMAN
vs.
ED. C. BETTS *et als.*

And the said plaintiff comes into court, by attorney, and says that his said declaration and the counts and the matters and things therein

contained, in manner and form as the same are therein set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants, and the said plaintiff is ready to verify and prove the same as the court here shall direct and award. Wherefore, inasmuch as the said defendants have not answered his said declaration and the several counts therein, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages in his declaration maintained, to be adjudged to him, &c.

SMITH, STOKES & GANT,
Attorneys for Plaintiff.

And thereafter, to wit, on the 22d day of Nov., the judgment of the court was had on said demurrers, &c., as follows:

And now come the parties, by their attorneys, and upon call of this cause the arguments of counsel on defendants' demurrer
20 to plaintiff's declaration in said cause being concluded, it is considered by the court that said defendants' demurrer be sustained as to the first count of said declaration, and overruled as to the remaining counts, and thereupon on the application and motion of plaintiff, it is ordered by the court that plaintiff have leave to amend their said declaration in the said first count demurred to.

And now comes the defendant, by counsel, and suggests to the court the death of defendant, A. W. Arnold; and thereupon said suggestion is ordered to be entered of record by the court. At instance of defendants' counsel it is ordered that they have leave to withdraw a special demurrer in this cause filed.

On motion of plaintiff, it is considered by the court that this cause be now discontinued as to the defendant, James Woodruff, and that he pay his proportion of the costs herein thus far expended.

And thereafter, to wit, on the 22d day of Nov'r, comes plaintiff, by attorney and files his amended count, in words and figures follow'g, to wit:

Amended counts in declaration.

21 JAMES HICKMAN,
vs.
EDWARD C. BETTS, THOMAS S. MCCALLEY, AND others.

In the District Court of the United States of America, for the northern district of the State of Alabama, sitting at Huntsville, May term, 1866, amended at November term, 1866, and filed by leave of the court.

The plaintiff, James Hickman, who is a citizen of the State of Tennessee, claims of the defendants, Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Matthews, John W. Cooper, Stephen W. Harris, James H. Mastin, William Larkins, Enoch Aldridge, Absolom W. Arnold, James Woodruff, Samuel Elliot, William Griffin,

William G. Jones, Requirer, Benjamin T. Moore, Robert W. Coltart, and John Withers Clay, who are in court by summons, &c., and who are citizens of said State of Alabama, residing in the said State, and in said northern district, and within the jurisdiction of this court, the sum of one hundred thousand dollars as damages for maliciously and without probable cause, having and causing him, the said plaintiff, to be arrested, imprisoned, indicted, and
22 tried on the supposed charge of treason against the late so-called Confederate States of America, at the city of Huntsville, Madison county, in the said State of Alabama, and in the district aforesaid, on the day 1863, &c., in and before William Jones, one of the said defendants, the supposed judge of the so-called Confederate States Court for northern district of the State of Alabama, in the said city of Huntsville, and presiding and holding the said supposed [supposed] court of said supposed so-called Confederate States of America, &c., of and from which said indictment and charge the said plaintiff was then and there in said district aforesaid, on the day of , 1863, before said supposed court, tried and acquitted by a jury of said district, and discharged by the said supposed court, to the damage of the said plaintiff one hundred thousand dollars and therefore he brings his suit.

SMITH, STOKES & GRANT,
Att'ys for Plaintiff.

And thereafter, to wit, on the 22d day of November, 1866, come the defendants, by their attorney, and file their pleas to the plaintiff's declaration, in words and figures following, to-wit:

23 District Court U. S., northern district of Ala., Nov. term, 1866.

JAMES HICKMAN
vs.
EDWARD C. BETTS *et als.*

The defendants, by their attorney, comes and defends, &c., and say that they are not guilty of the said supposed wrongs and grievances in plaintiff's complaint laid to their charge, or any or either of them, or any part thereof, in manner and form as the plaintiff hath complained against them, and of this they put themselves upon the country.

BEIRNE & GORDON,
ROBINSON & WALKER,
For Def'ts.

And the plaintiff doth the like.

SMITH, HUMPHREYS & GRANT,
For Plaintiff.

The defendants, Robert W. Coltart, and J. Wethers Clay, by their attorneys, come and defend, &c., and for further plea say, that before and after the time of said pretended grievances in the complaint alleged, the plaintiff yielded obedience and assumed allegiance to the said Confederate States, and prior to said pretended grievances had aided said Confederate States in raising and supporting armies
24 to wage war against the United States, and had been an active supporter of the said Confederate States, and this, &c.

BEIRNE & GORDEN,
ROBINSON and WALKER,
For Def'ts.

And on the 21st day of December, 1866, came the defendant, Benjamin T. Moore, pro se, and files his plea, as follows, to wit:

In the District Court of the United States, Nov. term, 1866.

Pleas.

JAMES HICKMAN
vs.
BENJ. T. MOORE *et al.*

The defendant, Benjamin T. Moore, for answer to the complaint, saith that he is not guilty of the matters alleged therein.

B. T. MOORE, *Pro se.*

And again, on the 22d Nov., 1866, comes said Benjamin T. Moore, and files his further plea, in words, &c., following, to wit:

In the District Court of the United States for the northern dist. of Alabama, Nov. term, 1866.

Pleas.

JAMES HICKMAN
vs.
BENJ. T. MOORE *et als.*

The defendant, Benjamin T. Moore, comes pro se, &c., and for further plea says that heretofore, and after the time of said pretended grievances in the complaint alleged, the plaintiff yielded obedience and assumed allegiance to said Confederate States, and prior to said pretended grievances had aided said Con-
25 federate States in raising and supporting armies to wage war against said United States, and had been an active supporter of said Confederate States, and this, &c.

B. T. MOORE, *Pro se.*

Replication, issue, &c.

HUMPHREYS, SMITH & GANT,
Attorneys for Plaintiff.

And thereafter, on the 22d day of November, comes the plaintiff, by attorney, and files a demurrer to said plea, in the words and figures, as follows, to wit:

Demurrer.

JAMES HICKMAN, plaintiff,
vs.
EDWARD C. BETTS, THOMAS S. MCCALLEY, SAMUEL Coltart, Samuel Matthews, John W. Cooper, James H. Mastin, William Larken, Enoch M. Aldridge, Samuel Elliott, William Griffin, Stephen W. Harris.

UNITED STATES OF AMERICA, *Northern District of Alabama*:

And the said plaintiff, by attorney, demurs to the 2d and special plea of defendants, and for cause of demurrer, says that the matters and things set forth in their said 2d and special plea are not sufficient in law to constitute a defense to this action and suit of plain-
26 tiff; because, he says, that the supposed authority under which the defendant acted are not sufficient in law to constitute a legal defense to this suit, because, he says, that the supposed organization under which the defendants justify was an illegal and unconstitutional organization, and is not sufficient in law to constitute a defense to this suit and action, and this he is ready to verify; therefore, &c.

GANT & HUMPHERYS,
For Plaintiff.

JAMES HICKMAN
vs.
ROBERT W. COLTART AND JOHN WITHERS CLAY.

And plaintiff demurs to the 2d plea of def'ts, and assigns as cause of demurrer that the matters and things contained in said plea are not sufficient in law to constitute a defense to this suit and action of the plaintiff; because, he says, that the facts stated in said pleas, that the plaintiff yielded obedience, and assumed allegiance to said supposed Confederate States, and that he has aided said supposed Confederate States, are not sufficient in law to constitute a defense in this action, and this he is ready to verify; wherefore, &c.

GANT & HUMPHERYS,
For Pl'ff.

Joinder in demurrer, in short, by consent.

ROBINSON & WALKER, and
BEIRNE & GORDON,
Att'y for Def'ts.

27 And therefore on the 22d day of November, 1866, the following judgment of the court was had, to wit:

Comes the plaintiff and demurs to pleas of defendant filed; and on hearing, it is considered by the court that said [said] demurrer to said

plea be overruled, and at plaintiffs' instance it was considered by the court that they have leave to reply to said pleas which is done.

And thereafter, to wit, on the 23rd day of November, 1866, "come the parties, by attorney, and come also a jury of twelve good and lawful men, to wit: John Ogden, Willian A. Austin, William C. Thomas, Andrew D. Lighton, Henry G. Thomas, James W. Steele, Albert J. White, Joseph C. Steele, Jacob Y. Canturll and George W. Taber. And now, the panel of petit jurors being exhausted, it is ordered by the court that the marshal do summon a panel of twenty-four good and lawful men, to serve as petit jurors from the bystanders, which is by the marshal accordingly done and from said panel comes George W. Blanton and William S. Kerr, and all of the above-named jurors are duly sworn well and truly to try, and a true verdict to
28 render, on the issues joined. The hearing of this is now proceeded with before said jury.

Ordered by the court, that a bailiff be sworn to take charge of said jury, and Brittin Franks, one of the bailiffs in attendance on the court, is specially sworn, and takes charge of said petit jury.

Saturday, the 24th day of November, this cause was called, and the plaintiff proceeded before the jury with his evidence, and pending said proceeding, at 4 o'clock p. m., the court was adjourned until Monday morning, the 26th day of Nov., 1866, at 10 o'c. a. m.

And on Monday, the 26th day of November, court opened pursuant to adjournment.

JAMES HICKMAN
vs.
ED. C. BETTS *et als.*

In this cause the jury empanneled is called and discharged until to-morrow morning.

Tuesday, Nov. 27, 1866.—Court opened and adjourned until to-morrow morning at 10 o'c. a. m.

Wednesday, the 28 day of November, 1866, court opened as per adjournment; and therefore it is ordered by the court that in
29 consequence of the sudden and severe illness of the presiding judge, no causes * * which require the intervention of a jury be tried at this term of the court, but that same be, and all hereby, continued until the next term of this court.

And therefore, to wit, at a term of the District Court of the United States for the northern district of the State of Alabama, begun and held at the court-house in the city of Huntsville, in said district, on the third Monday in November, A. D. eighteen hundred and sixty-seven, (it being the 18th day of said month,) in the said cause of—

JAMES HICKMAN
vs.
EDWARD C. BETTS *et als.*

On this 20th day of November, A. D. 1867, it being the third day of the term of the court, comes the plaintiff, by his attorney, and moves

the court to strike out the special pleas of the defendants in this cause interposed; and, upon hearing of counsel, it is ordered by the court that said special pleas of defendant, be, and the same are hereby, stricken out from the defendant's pleas in this cause.

And now, on motion of the plaintiff, it appearing to the court
30 that a motion of the plaintiff for dismissal as to defendant, William G. Jones, was at the last term of this court made and granted but was not entered in the minutes, it is ordered that said entry of dismissal be made now for then, and that said entry shall have relation back to the granting of said motion, and be of the same effect as if then entered of record.

And again come the parties, by their attorneys, and come also a jury of good and lawful men, to wit: Larkin Willis, Andrew J. Eslinger, Livi Hurds, Joseph Conner, Marcus D. Rublee, James D. Cross, Reuben Street, John T. Patterson, James W. Pollard, William C. Mullen, Thomas J. Clay, and Samuel Bishop; and said jury being first duly sworn well and truly to try and a true verdict to render upon the issues joined, the hearing of this cause proceeds.

It is ordered by the court that a baliff be sworn, and Britton Franks, one of the bailiffs of this court, is specially sworn to attend upon said jury.

Monday, the 25th day of November, A. D. 1861, being the 7th day of this term of the court.

JAMES HICKMAN
vs.
ED. C. BETTS *et als.*

Again come the parties, by their attorneys, this being a day
31 of the continuance and pendency of said cause, and the said parties having rested their evidence in the cause, comes the jury aforesaid, and they being duly charged by the court upon the matter of their enquiry, they return that they do find the issue for the defendants in words, as follows, to wit: "We the jury find for the defendants. John T. Patterson foreman of the jury."

It is therefore considered by the court that the defendants recover of the plaitniff their cost in this behalf expended.

Tuesday, the 26th day of November, A. D. 1867, it being the 8th day of this term of the court.

JAMES HICKMAN
vs.
ED. C. BETTS *et als.*

Comes the plaintiff, by his attorney, an moves the court for a new trial of this case, for reasons verbally alleged; but, upon hearing, this motion is by the court denied.

Wednesday, the 27 day of November, A. D. 1867, it being the 9th day of this term of the court.

JAMES HICKMAN
vs.
ED. C. BETTS *et als.*

Come again the parties, by their counsel, when plaintiff, by his counsel, tendered his bill of exceptions, which was signed and sealed by the court, and ordered to be made a part of the record in this cause; and the writ of error being granted, the clerk of this
32 court will make out and certify to the Supreme Court of the United States, at Washington, a complete transcript of the record in this cause, with the bond for cost, the writ of error and citation, and the endorsement thereon, as required by law.

33 In the District Court of the United States of America for the northern district of the State of Alabama, sitting at Huntsville, May term, 1867.

JAMES HICKMAN
vs.
EDWARD C. BETTS, THOMAS S. MCCALLEY, Samuel Coltart, Samuel Matthews, John W. Cooper, James H. Mastin, William Larkin, Enoch Aldridge, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, Benjamin T. Moore.

Be it remembered, that this cause came on for trial before the Honorable Richard Busteed, judge of the District Court of the United States for the northern district of Alabama, at Huntsville, at the November term of said court, in 1867, and a jury of said district.

The plaintiff's declaration and defendants' pleas of "Not guilty," were read to the court and jury, which are as follows, to wit:

JAMES HICKMAN,
vs.
EDWARD C. BETTS, THOMAS S. MCCALLY and others.

The plaintiff, James Hickman, who [who] is a citizen of the State of Tennessee, claims of the defendants, Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, S. W. Harris, James H. Mastin, William Larkin, Enoch Aldridge, A. W. Arnold, James Woodruff, Samuel Elliott, William Griffin, William G. Jones, Requier, B. T. Moore, R. W. Coltart, and J.
34 Withers Clay, who are in court by summons, &c., and who are citizens of the said State of Alabama, residing in the said northern district thereof, and within the jurisdiction of this court, the sum of one hundred thousand dollars, as damages for maliciously

and without probable cause having and causing him, the said plaintiff, to be arrested, imprisoned, indicted and tried on the supposed charge of treason to the late so-called "Confederate States of America," at the city of Huntsville, Madison county, in said [said] State of Alabama, and in the district aforesaid, on the day of , in the year one thousand eight hundred and sixty-three, &c., of, &c., from which said indictment and charge the said plaintiff was then and there acquitted and discharged, to the damage of the said plaintiff one hundred thousand dollars, and therefore he sueth.

And the said plaintiff, James Hickman, who is a citizen as aforesaid, claims of the said defendants last above mentioned, who are citizens and residents as aforesaid, the further sum of one hundred thousand dollars as damages.

For that whereas the said defendants, contriving and maliciously intending to injure the said plaintiff, and to cause him to be imprisoned, and kept and detained in prison, and to put him
35 to great charges and expenses of his moneys, and to confiscate and take away from him his property and effects, and to put him in great peril of losing his life by being hung, and to vex, harass, oppress, impoverish and wholly ruined him, the said plaintiff; therefore, to wit, on the day of , 1863, at, &c., in the district aforesaid, falsely and maliciously, and without any reasonable or probable cause whatsoever, arrested, and caused and procured to be arrested, him, the said plaintiff, and then and there to be held to answer for the supposed crime of treason against the so-called "Confederate States," on and before the judge of the District Court of the called "Confederate States," as aforesaid, for the northern district of the said State of Alabama, to be holden at the said city of Huntsville, on the day of , 1863, and to continue in session from day to day, which said District Court of the so-called "Confederate States" assumed to, and did, try and punish the alleged crime of treason, and other alleged offences against the said so-called "Confederate States," alleged to be committed within said northern district aforesaid.

And the said plaintiff further says that the said defendants, afterwards, to wit, on the day of , 1863, at, &c., aforesaid, falsely and maliciously, and without reasonable or probable cause
36 whatsoever, indicted, and caused and procured him, the said plaintiff, to be indicted in and before the said District Court of the so-called "Confederate States," for the supposed crime of treason against the so-called "Confederate States."

And the said plaintiff further says that the said defendants, falsely and maliciously, and without any reasonable or probable cause whatsoever, prosecuted and caused, procured and incited to be prosecuted, the said indictment against him, the said plaintiff, to wit, at the city Huntsville aforesaid, until the said plaintiff, afterwards, to wit, on the day of , 1863, before the said District Court of the so-called Confederate States for the said northern district aforesaid, was, according to the cause of proceedings of said supposed court, by a jury of said northern district, acquitted of the matters and

things in the said indictment charged against him, the said plaintiff, in manner aforesaid; whereupon it was then and there considered in and by the said District Court that the said plaintiff, of the matters and things in the said indictment specified, should be discharged, and should go without day, as by the record and proceedings remaining in the said court, reference being thereunto had will more fully appear; by means of which said premises, he, the said plain-
37 tiff, has been forced and obliged to undergo, and has undergone, many great troubles and labors, both of body and mind, and to lay out and expend divers large sums of money, to wit, the sum of thousand dollars, in and about defending himself in the premises, and the manifestations of his innocence therein, and has been imprisoned, and kept and detained in prison and confined in jail for a great length of time, to wit, for the space of five months, and has been put in great peril of losing his life, and his property and effects; and the said plaintiff was also, by means of the premises, greatly hindered and prevented from transacting his necessary and lawful affairs and business for divers long spaces of time, and has been, and is, greatly otherwise injured and damnified, and very much injured, to wit. at, &c., as aforesaid.

And the said plaintiff, James Hickman citizen as aforesaid, claims from the said defendants, citizens and residents as aforesaid, the further sum of one hundred thousand dollars as damages:

For that whereas before and at the time of the committing of the grievances by the said defendants next hereinafter mentioned, the said State of Alabama, and a majority of the people thereof, and ten other States, and a majority of the people thereof, being States
38 and citizens of, and owning true fidelity, loyalty and allegiance to the government of the United States of America, had rebelled, and were then engaged in waging a civil war against the said government of the United States, and the loyal States thereof, and that the said rebellion and insurrectionary States, and their people, in furtherance and promotion of said rebellion and civil war, had assumed to organize, and were then actually organized, under a government know and styled the "Confederate States of America," and that the said government of the "Confederate States," for the same illegal and unlawful purpose and intent, had assumed to organize, and had in fact organized and constituted, with other courts, a District Court for the northern district of the said State of Alabama, and had assumed to empower and authorize said District Court to try and punish all supposed crimes and offenses against the said so-called "Confederate States" within said northern district, and had assumed to appoint and commission defendant, William Jones, judge of said court, who was acting as such judge at the time of the committing of the grievances next hereinafter mentioned, all of which actings and proceedings were utterly null and void, and in direct violation of the fidelity, loyalty and allegiance of said States, and the people thereof, to the said government of the United States.

39 And whereas the said defendants, further contriving and

intending as aforesaid, and to aid and abet said rebellion against the government of the United States, heretofore, to wit, on the day of , 1863, at Huntsville, in said northern district of the State of Alabama, maliciously, and without any reasonable or probable cause whatsoever, arrested, and caused and procured to be arrested and imprisoned, and confined in jail, him, the said plaintiff; and afterwards, to wit, on the day of , 1863, at, &c., aforesaid, indicted, and caused and procured to be indicted, him, the said plaintiff, in and before the said District Court, and the judge thereof, at the city of Huntsville aforesaid, for the supposed crime of treason against the so-called "Confederate States."

And the said plaintiff further says that the said defendants, further contriving and intending, as aforesaid, falsely and maliciously, and without reasonable or probable cause, prosecuted, and caused and procured to be prosecuted, the said last-mentioned pretended indictment against him, the said plaintiff, at, &c., aforesaid, in and before the said pretended District Court, until the said plaintiffs, afterwards, to wit, on the day of , 1863, at, &c., aforesaid, was, by a jury of said northern district, acquitted of the matters and things in the said pretended indictment charged against him as aforesaid, and the said plaintiff was then and there discharged
40 and set at liberty; by means of which said last-mentioned premises the said plaintiff has been forced and compelled to expend large sums of money, to wit, the sum of thousand dollars, in and defending himself against said unjust and illegal prosecution; has undergone many great hardships, troubles and labors, both of body and mind; has been imprisoned and confined in jail for a long space of time, to wit, for the space of days; has been put in great peril of losing his life, his liberty, and his property, and effects; has been greatly hindered and prevented from attending to and transacting his lawful affairs and business for divers long spaces of time, and has been and is otherwise very much injured and damaged, to wit, at, &c., aforesaid; wherefore the said plaintiff says that he is injured, and has sustained damages to the amount of one hundred thousand dollars; and therefore he brings his suit, &c.

GANT, SMITH & STOKES,
Attorneys for Plaintiff.

In the Dist. Court of the United States, nor. dist. of Alabama, Nov. term, 1867.

Plea.

JAMES HICKMAN
vs.
EDWARD C. BETTS *et als.*

The defendants, by their attorneys, come and defends, &c., and say that they are not guilty of the said supposed wrongs and grievances in the plaintiff's complaint laid to their charge, or
41 any or either of them, or any part thereof, in manner and

form as the plaintiff hath complained against; and of this they put themselves upon the country.

BEIRNE & GORDON,
ROBINSON & WALKER,
For Defendants.

And the plaintiff doth the like.

SMITH, HUMPHREY & GANT,
Att'ys for the Plaintiff.

The plaintiff here read the agreement of parties by their counsel, which is as follows, to wit:

JAS. HICKMAN
vs.
EDWARD C. BETTS *et al.*, &c.

It is agreed by the counsel for the plaintiff and defendant in this cause, that in the month of January, 1863, there was assembled in the city of Huntsville, in the northern district of of the State of Alabama, a so-called court of the so-called Confederate States of America, under an organization of the so-called Confederate States, which confederate court was held and presided over by one Williams G. Jones, acting as judge of said court, who had been appointed by the President of the so-called Confederate States to act as judge of said court; that in the said month of January, 1863, defendants, except Robert W. Coltart, John W. Clay, and Benjamin T. Moore, having been first summoned by the marshal of said so-called court, were empannelled, sworn and charged as a grand jury by said so-
42 called court to inquire into alleged offences against said so-called Confederate States, and said defendants, except said Robert W. Coltart, John W. Clay, and Benjamin F. Moore, proceeded to act as a grand jury for said so-called court, and brought in and returned before said so-called court, on the 23 day of January, A. D. 1863, in said city of Huntsville, a paper writing purporting to be a bill of indictment against the said plaintiff, James Hickman, for the crime of treason against the so-called Confederate States of America; that on the said 23rd day of January, A. D. 1863, a paper writing, purporting to be a writ directed to the marshal of the northern district of the State of Alabama, in the so-called Confederate States of America, was issued and signed by the said defendant, Benjamin Moore, who had been appointed, and was acting as the clerk of said so-called District Court, commanding the said marshal, Benjamin Patterson to arrest plaintiff and hold him in custody until discharged by course of law; that on said 23d day of January, 1863, at said city of Huntsville, in the county of Madison, State of Alabama, the plaintiff was arrested by motion of said writ, arrested and held in custody by the said Benjamin Patterson, marshal aforesaid, in said county
43 of Madison; that plaintiff applied to the said so-called judge, William G. Jones to be bailed out, and go at large, on bond for his appearance to answer said charge; but said so-called judge William G. Jones refused to admit the plaintiff to give bond and

security for his appearance, but remanded plaintiff to custody; that by said writ, plaintiff was held in custody in the said county of Madison from the said 23rd day of January, 1863, until day of May, 1863; that during the week of May, 1863, the said so-called court, presided over as aforesaid by the said William G. Jones, met and went through the forms of empanneling a petit jury, and plaintiff was put upon trial, and was acquitted of the said charge of treason by the said petit jury. It is agreed that plaintiff's attorneys may read to the court and jury, as part of the evidence in this cause, said indictment, with the endorsements thereon, and said copies issued by said Moore and the endorsement thereon. It is further admitted that the army of the United States government entered the said city of Huntsville on the 11th day of April, 1862, and remained therein, and held a part of the territory of the northern district of Alabama, north of the Tennessee river, until the first day of September, 1862, when said army of the United States left said northern district of Alabama, and did not return to it until July, 1863.

44

This Nov., 1866.

SMITH, HUMPHREY & GANT,
Att'y for Plaintiff.
BEIRNE & GORDON,
ROBINSON & WALKER,
Att'ys for Defendants.

Filed 27th Nov., 1866.

LIONEL W. DAY,
Cl'k U. S. Dist. Court.

The plaintiffs then read the indictment referred to in the pleadings, and the endorsement thereon, which are as follows, to wit:

CONFEDERATE STATES OF AMERICA,
District of Alabama, Northern Division, to wit:

District Court of the Confederate States of America for the division of the district aforesaid of the term begun and holden at Huntsville, on the third Monday of January, A. D. eighteen hundred and sixty-three.

The grand jurors of the Confederate States of America within and for the division of the district aforesaid upon their oaths present, that on the first day of July, A. D. eighteen hundred and sixty-two, and long before, and continually from thence hitherto, an open public war was and yet is prosecuted and carried on between the Confederate States of America and the persons exercising the powers of government in the United States of America, and that James Hickman, late of said division, a citizen of said Confederates States, well knowing the premises, but not regarding the duty of his allegiance, but as a traitor against the said Confederate States, and wholly withdrawing the allegiance, fidelity and obedience which every citizen of the said Confederate States of right ought to bear

45

towards the government and people thereof, wickedly and traitorously did compass, imagine, and intend to levy war against the said Confederate States within the same, and to fulfil and bring into effect the said traitorous intention of him, the said James Hickman, afterward and during the said war, that is to say, on the second day of July, A. D. 1862, at Huntsville, in the division and district aforesaid, and within the jurisdiction of this court, with a large number of persons, being then and there troops in the service of the said United States and enemies of the said Confederate States, in the prosecution of said war against them, whose names are to said grand jurors unknown, to wit, the number of fifty persons and upwards, armed and arrayed in a warlike manner, that is to say, with one cannon, guns, swords and other warlike weapons, as well offensive as
46 defensive, and then and there engaged in carrying on a warlike expedition from Huntsville, as aforesaid, to the residence of one Benjamin Lawler, in the same division and district aforesaid, organized for the procurement of cotton, and to oppose and overcome with actual force and arms such troops of the said Confederate States as might resist the progress, or might interfere with the consumation of the object of the said expedition, did traitorously, then and there, assemble and combine with the said troops of the said United States in the prosecution of their said expedition against the said Confederate States, and then and there, with force and arms, wickedly and traitorously, and with the wicked and traitorous intention of co-operating with the said troops of the United States in effecting the object of their said hostile expedition, did array and dispose himself with them in a warlike and hostile manner against the said Confederate States, and then and there, with force and arms, in pursuance of such his traitorous intentions, he, the said James Hickman, with the said persons so as aforesaid assembled, armed and arrayed in manner aforesaid, wickedly and traitorously did levy war against the said Confederate States.

And further to fulfil and bring to effect the said traitorous intentions of him, the said James Hickman, and in pursuance and execution of the said wicked intention and traitorous combination with the public enemies of the said Confederate States, in carrying on
47 their said hostile expedition as aforesaid, he, the said James Hickman, afterwards, and during the continuance of the said public war as aforesaid, to wit, on the third day of July, A. D. 1862, at Huntsville, in the division and district aforesaid, and within the jurisdiction of this court, with the said persons whose names are to the said grand jurors aforesaid unknown, did wickedly and traitorously assemble and combine against the said Confederate States, with the avowed intention to unite and co-operate with the said persons in a hostile expedition against the said Confederate States, and in pursuance and execution of such his wicked and traitorous intention and combination, he, the said James Hickman, then and there, with force and arms, with the said persons, being then and there such enemies of the Confederate States, and engaged in the prosecution of the said war against them as aforesaid, to a large number, to wit, to the

number of fifty persons and upwards, armed and arrayed in a warlike manner, that is to say, with one cannon, guns, swords, and other warlike weapons, as well offensive as defensive, and then and there employed in carrying on a warlike expedition from Huntsville, as aforesaid, to Jackson county, in said division and district aforesaid, organized for the procurement of cotton, and to confront and overcome, with force and arms, such troops of the said Confeder-
48 ate States as might oppose the progress, or interfere with the consummation of the object of the said expedition, did traitorously assemble and combine with the said enemies of the said Confederate States, as aforesaid, in effecting the object of their said hostile expedition, and did then and there array and dispose himself with them in a warlike and hostile manner against the said Confederate States, and then and there, with force and arms, in pursuance of such his traitorous intention, he, the said James Hickman, with the said persons, so as aforesaid armed, arrayed, and assembled in manner aforesaid, wickedly and traitorously, did levy war against the said Confederate States, contrary to the duty of his said allegiance, against the power of the statute in such case made and provided, and against the peace and dignity of the said Confederate States of America.

(S'g'd) A. J. REQUIER,
Dist. Att'y of the C. States, Dist. of Alabama.

Endorsed on the back: "Filed in open court this 23d day of January, 1863. Teste B. T. Moore, clerk, D. C. The Confederate States of America *vs.* Ind't James Hickman, treason. Witnesses:
49 Thomas McCuay, Isaac N. Wurston, Joseph Wurston, Daniel A. Brown, Thomas T. Douglass, Matthew W. Steele, Rev. John G. Wilson, Rt. Rev. Henry Clay, Benjamin Lawler, Russel D. Rieley. A true bill. Edward C. Betts, foreman of the grand jury."

The plaintiffs read the warrant of arrest for plaintiff, issued by defendant Moore, as clerk of the so-called confederate court, and the endorsements thereon, to wit:

The President of the Confederate States of America to the marshal of the district of Alabama, greeting:

We command you to take the body of James Hickman instanter, if to be found in your district, and him safely keep, so that you have his body before the charge of the District Court of the Confederate States of America, for the northern division of the district of Alabame, now in session, and commenced on the third Monday in January, instant, to answer the Confederate States of America upon a charge treason, whereof he stands indicted by the grand jurors of said court at the term thereof, commenced as aforesaid, and
50 now in session at the court-house, in the city of Huntsville.
Herein fail not.

Witness the Hon. William G. Jones, judge of the said district

court, this the twenty-third day of January, A. D. one thousand eight hundred and sixty-three.

Attest : B. T. MOORE, *Clerk D. C.*

Issued 23d day of January, 1863.

Endorsements : 2 The C. S. of America *vs.* James Hickman, case treason. Received 23 January, 1863. Benjamin Patterson, C. S. marshal for the district of Ala. Executed, and defendant delivered to E. E. Douglass, sheriff and jailor of Madison county, Ala., this 23 January, 1863. Benjamin Patterson, C. S. marshal for the district of Ala.

Edward E. Douglass, witness, sworn for plaintiff, says: I was sheriff for Madison county, Alabama, in 1863 ; was elected in August, 1861 ; know plaintiff. He was in my custody in 1863. He was delivered to me by Gen. Patterson, the marshal for the northern district of Alabama, under the Confederate States. The defendant,
Robert W. Coltart, was deputy marshal under Gen. Patterson;
51 he acted as such deputy. Patterson is dead. Had plaintiff in my custody from some time in January until some time in May, 1863. I kept him confined at his house for five or six weeks under a guard I placed over him, by direction of Gen'l Patterson. The jail was not completed; that was why we confined him at his own house. I took him to the jail in March, 1863. Hickman paid the guard—five in number—five dollars per day, cash, and he boarded them in addition. At this time Hickman's family was afflicted with ill health; his wife was a delicate woman. When at the jail he was confined in an upper room, which was generally locked. He was allowed the limits of the back yard. I was here when plaintiff was tried. I think he was brought to and from court by a deputy marshal; I think Coltart or Sprague. The charge of a dollar and fifty cents per day would be a reasonable charge for boarding each one of guard. I don't think board could have been got for that sum. I knew all of the defendants.

Cross-examined.

The money paid by Hickman was paper money; do not know whether it was State money or confederate money. I was examined
at a former time in this cause. I don't think I then stated
52 that it was confederate money. The currency was not then equivalent to gold. Plaintiff's room at the jail was furnished by himself, and he furnished his own provisions. Coltart appeared to conduct the court at which plaintiff was tried. Plaintiff has not promised to release me from damages for my custody of him. Plaintiff's friends and family had access to him during the day.

L. Pope Walker, sworn, states:

I was counsel for the plaintiff in the case against him for treason to the Confederate States. He was tried at the May term, 1863, of the court. He was indicted at a special term in January, 1863. Don't re-

member that there was any special object in calling the January term. No general business was transacted then that I recollect. Our firm charged plaintiff five thousand dollars for professional services in the case. We sued plaintiff for this, and attached his property. We have received two thousand dollars in full of our fee, and he pays the cost in the Circuit Court, say in all twenty dollars. Hickman was confined in jail from four to six weeks aside from the time he was confined in his own house. Application was made to judge Jones during the January term of the court to bail plaintiff, but the appli-
53 cation was refused. The defendant Clay may or may not have been present during the bail proceedings. He was present during the trial of Hickman.

Cross-examined.

Question. Apart from any statement made to you by Hickman, as his counsel, or any knowledge derived by you in that capacity, do you know of his complicity in the rebellion before his arrest, and from the commencement of hostilities against the United States?

(Objected to by plaintiff's counsel, on the ground that it is no part of the res gestæ, and is not relevant proof under the plea of not guilty.)

The court overruled the objection, and stated his reasons as follows: "When the question in controversy was asked, I did not see that the testimony sought by it was within what is known to the law as the res gestæ. It appeared to me then that the inquiry was too remote. Subsequent reflection persuades me that the question is proper, and that the objection must be overruled. From its incipiency to its conclusion, from the hour when the first gun was fired at Fort Sumpter to that in which Lee capitulated to Grant, the rebellion may be said to be one act, made up, it is true, of countless details, but all
54 of them a part of the aim in view, viz., the establishment of an independent government in the rebellious States, and the overthrow of the authority of the United States in them."

To which ruling of the court the plaintiff, by his counsel, excepts.

Witness stated: I do know some facts independent of all relations between Hickman and myself as counsel and client. In the fall of 1861 I was at Huntsville. I was a brigadier general in the Confederate army. I conversed with General Hickman there. Hickman told me he was to be quartermaster or commissary under Humphries; that he had been to Decatur, the rendezvous of the brigade. Heard Hickman say so more than once. Other knowledge I have of the complicity of Hickman is so mixed up with my attorneyship that I ought not to state it.

Re-examined.

By plaintiff's counsel:

In the fall of 1861 I returned to Huntsville. Hickman professed to be a Union man until secession. I was absent from February, 1861, to October, 1861.

Question by plaintiff's counsel: Before the arrest of Hickman by the civil power of the Confederate States, was he or not arrested on a charge of loyalty to the United States by the military power
55 of the Confederate States?

(Defendants, by their counsel, objects, and the court sustains the objection, and excluded the answer, to which action of the court the plaintiff, by his counsel, excepted at the time.)

James Robinson, sworn, says:

I was one of Hickman's counsel on his trial for treason. I charged for my services five hundred dollars, which he paid.

Joseph C. Bradley, sworn, says:

I knew the plaintiff several years before the war. He was a Union man, and continued a Union man at heart, I think, always. He and I had frequent private talks on the subject of loyalty. After the State attempted to secede in January, 1861, it would have been unsafe for any man to have adhered to the United States government here. I was threatened with arrest myself for refusing to take confederate money. There was a vigilance committee established here to see to those things. They had a military organization to carry out (that is to extradite from the State) any man who was disloyal to the Confederate States. At a public meeting in Huntsville, before secession, we instructed our delegates to vote against seces-
56 sion. Hickman was present. I and Hickman talked over this matter. Hickman aided Humphreys to raise his legion, and I and Hickman afterwards aided to break it up. I went to Decatur to do this. Hickman's object, as he stated to me, of his going into the Humphrey's legion was to avoid any suspicion as to his loyalty to the Confederate States. Hickman always expressed to me that he was a Union man and for the United States government. There was some unpleasantness between defendant Clay and Hickman. Hickman spoke to me about the private circular he wrote and had printed. He told me the object he had in view was to make the confederates believe he was true to them and to keep from being arrested again; that Clay would have him arrested again if he did not do something. At the date of the circular Hickman's wife was an invalid. She died in February, 1864. I visited Hickman while in jail. I never saw any other visitor there except his wife. The public opinion was greatly bitter against Hickman because he was regarded as a Union man, notwithstanding his professions of loyalty to the Confederate States. It was not safe at any time during the war, except during the occupation by the federals, for any one in
57 Huntsville to declare himself a Union man; this is to say from January, 1861, to April, 1862, when the Federal army came to Huntsville, and from September, 1862, to July, 1863, when the federal army returned to Huntsville.

On cross-examination witness stated that Hickman applied to the confederate government for the post office. Witness does not know whether he heard that Hickman applied for this appointment, or

Hickman told him so. This was shortly after Reagan was appointed postmaster general. Witness thinks Hickman told him so. Hickman applied for the post office at the formation of the government, and thought he would be successful, because he knew Reagan in East Tennessee. Hickman is fifty-six years old.

On re-examination witness stated that Hickman wanted the post office to keep suspicion from him and get an easy place.

Nicholas Davis, a witness for the plaintiff, also proved that he was of counsel for plaintiff in his case before the confederate courts. His fee was five hundred dollars, but that fee was not solely for treason; he employed witness on his arrest by the military, and the fee covered this service, and a written defense witness made for Hickman. Witness further stated that the public sentiment in Huntsville against Union men was very hostile. It would not have been
58 safe after two months from the secession of Alabama to have any man with Union sentiments. It would have been unsafe to person and property, except when the Federal forces was here.

On cross-examination witness stated that a mere silence of a Union man would not have been unsafe. Witness recollects no private conversation between Hickman and himself on the subject of his Union sentiments. Heard him once address a company at Huntsville designed for the confederate army. He wanted to be captain of it. Was peppering them pretty tight for not electing him captain, after he had got them up. Hickman was a Union man after the federals were here. I think he stated that he was Union when the federals were here to get cotton facilities. This was in explanation to the confederates. After the passage of the ordinance of secession by Alabama, there was a flag, as I was told, on the house of Judge Lane, on the top of the house, on a flag-staff one foot high. Lane was brother-in-law of witness. The flag was put up during the discussion of secession, and its insignificant size, he thinks, was its protection.

59 On re-examination witness stated that Hickman was generally threatened with arrest by the Confederate States. The general impression of the public mind was that Hickman was not trustworthy, and was disposed to make money out of both sides. While confederates were here Hickman was a good confederate, and while federals were here he was a good federalist.

Ferdinand L. Hammond, sworn, says:

I have know Hickman twelve or fifteen years. I lived here when the rebellion commenced. Hickman was and professed to be a Union man. I remained here until July 21, 1861, and afterwards was occasionally in Huntsville. Before I left in 1861 I conversed with Hickman. He always professed himself a Uuion man. After two months from secession the public sentiment was very hostile to Union men; it was not safe for a Union man to express himself in opposition to the confederate cause. I knew of an instance of violence when an attempt was made to arrest Judge Humphreys on account of his Union

sentiments. He resisted and was not arrested. I was myself arrested. I was indicted by a grand jury for selling cotton to the enemy; and that bill of indictment was framed for selling cotton
60 to Gen. Hickman, who, I suppose, was the enemy intended. I had not sold cotton to any other person after the beginning of the war. The cotton was sold and delivered during the occupation of Huntsville by the national forces. I was indicted about the time that Hickman was.

Cross-examined.

I understood the indictment to be for selling cotton to the enemy. I don't know whether I was indicted under the statute of the Confederate States, entitled A bill to impose regulations on foreign commerce. I was indicted in Febu'y, 1863. I had to give a bond for fifteen or twenty thousand dollars. I was in Tennessee when the indictment was found.

Thomas U. Green, witness sworn, says:

I have known Hickman some fifteen or twenty years. When the war broke out I lived in ten miles of Huntsville. Hickman was a Union man till the war broke out; after that I did not know much of him until the occupation of Huntsville by the federal forces; saw him occasionally after that, and conversed with him. He always claimed to be loyal to the United States.

Plaintiff's counsel asked the witness what was the public sentiment outside of Huntsville against Union men during the years 1861, 1862, and 1863, and, under objection by defendants' counsel, the court
61 confined the inquiry to the public sentiment of Huntsville, that being the place of plaintiff's residence during those years; to which ruling of the court the plaintiff by his counsel excepted at the time.

David C. Humphrey, sworn, says:

I have known Hickman fourteen or fifteen years. He was a Union man before the war; he voted the Union ticket. He acted in Huntsville with the Union party until the provisional government of the Confederate States was formed, about the 12th Jan., 1861. When news of the secession of Alabama was received in Huntsville, a meeting of citizens was held to raise the flag of the United States on this court-house. It was unsafe to profess Union sentiments in Huntsville after the secession of Alabama. Hickman was with me at Decatur ten days.

Cross-ex'm'd.

The brigade rendezvouzed at Decatur in September, 1861, and remained there four weeks. I raised this force for the confederate government. I tendered it to Mr. Benjamin, secretary of war. It was raised in good faith by me. Hickman did not aid me to raise it; he acted as quartermaster for it. Hickman left Decatur for Nashville; he

went on his own business, but said he would endeavor to get
62 arms for the force, but he did not do it. He was energetic, active, and efficient as quartermaster. We had fourteen companies. He advanced money to me, which I returned to him. While Hickman acted as my quartermaster no conversation occurred between us upon the subject of his motive in acting as quartermaster. We had no private confidential conversation on the subject of my bona fide intentions in raising the brigade. The brigade was disbanded.

Re-direct examined.

It is a fact that part of a company of the 1st Alabama U. S. volunteers was made up of my bridgade. This regiment, however, was not made up for a year after my brigade was broken up.

Perry L. Harrison, sworn, says :

I have known plaintiff 12 or 15 years. I lived eighteen miles from Huntsville. I met with plaintiff several times during the war; saw him frequently in 1861 and 1862 and 1863. He always told me he was a loyal man to the United States. I saw him when Huntsville was in the confederate occupation. He said then to me privately that the confederacy would prove a failure; that he was a Union
63 man; that the Union men would be relieved when the Yankees got here. He appeared very glad they were coming. I saw him in jail. Most any good rebel said he ought to be hung. He said to me in prison that he was a loyal Union man. I was present at his trial, and saw him brought from the jail to court.

Christopher C. Sheets, sworn, says:

I knew plaintiff since 1863. I met him the 2nd day of March, 1863. He was under arrest, and so was I. I was discharged, and then rearrested. I met the plaintiff in the jail. While in jail we talked every day on the subject of his adhering to the United States. He always expressed himself as loyal to the United States. He told me had always been loyal. He told me that his printed circular was written and printed by him in vindication of himself; that he had been arrested and taken to Columbia, Tennessee; that Bragg released him, and he came back to Huntsville. He did not tell me what was his real motive for writing his circular.

John G. Heap, sworn, says:

I have known plaintiff ten years. I lived in Huntsville when
64 the rebellion broke out. I conversed with plaintiff privately often. He claimed uniformly to be loyal to the United States. It was not safe for a Union man publicly to express Union sentiments here after the ordinance of secession. He might express them privately to a few rebels and to Union men. I left here with the federal army, and returned with it in 1863. After my return I conversed with plaintiff about his circular. He told me he wrote it to protect himself against a grand jury indictment. At one time he told me he was influenced to write it.

Richard H. Barham, sworn, says:

I lived here when the war broke out, and until July, 1863. In November, 1862, I was in the plaintiff's employment. I did not have any conversations with him. I recollect only one private conversation with him. This was in December, 1862. He was writing for an hour and a half. He read to me the paper. It was the circular; it expressed sentiments against the United States. I said, I thought you were a Union man. He said, So I am, but J. Withers Clay will have me arrested if I do not write this. Plaintiff was a dry-goods
65 and grocery dealer, when he was arrested; most of his goods were taken away from him when Gen. Bates had him arrested. The business closed during his imprisonment, as far as I know.
66 Plaintiff's counsel here read sundry editorials from the Huntsville Confederate, a newspaper edited and published by defendant, J. Withers Clay.

[Extract dated Dec. 10, 1862.]

Military arrests.

Under General Bates jurisdiction some persons are beginning to feel the power of the confederate government.

Gen. James Hickman, of this city, was arrested yesterday by request of Brig. Gen. Forrest, on a charge of getting leave to purchase salt and transport it from Columbia, Tenn., to Alabama, not for speculation, but the benefit of soldiers' families, and then selling it here for $75 in gold per barrel. We understand he admitted to Gen. Bate that he did sell it for the price stated in gold. He has been put in charge of Lieut. Chas. O. Shepherd and a guard, to be taken to Columbia to day. He has the reputation here of affiliating and sympathising with the Yankees during their occupation of North Ala., trading in cotton, and doing many other disloyal acts."

Gen. Bate has had Robert Richards, a private in Bragg's army, now at home near Vienna, in this county, arrested on a charge of discouraging the enforcement of the conscript law, by exaggerated accounts of the sufferings of soldiers and the rigor of military discipline.

67 [Extract, date Dec. 31, 1862.]

Gen. James Hickman released.

Perhaps no event during the war caused more general surprise here than the release of Gen. Hickman by Gen. Bragg. It was thought that the grave charges against him of bringing salt from Tennessee under the pretense of accommodating soldiers' families and then selling it (as we understand he admitted) for $75 in gold, and nothing but gold, taken in connection with many alleged acts of disloyalty and treasonable complicity with the abolitionists during their occupation of Huntsville, would have induced a man of Gen. Bragg's reputed rigor to investigate more closely before releasing. We understand

that the responsibility of his release rests upon the Advocate's editorial commendation of Gen. Hickman for (professedly) bringing supplies for our citizens at cost and carriage, and a letter or letters from one or more citizens of Huntsville, who were refugees, and know nothing personally of Gen. Hickman's conduct while the abolitionists were here. Possibly Gen. Bragg thought Gen. H. would be more properly amenable to a judicial tribunal. Gen. H.'s case needs investigation. He was thoroughly with the abolitionists during their occupation, or he is a very much wronged and slandered individual.

68 [Extract, dated Jan'ry 7, 1863.]

James Hickman again.

This individual has published in a circular form, and in the columns of the Huntsville Advocate, an address "To the people of North Alabama," protesting his loyalty to the southern cause, and defending himself against the charge of disloyalty. He states a good many things that may or may not be true, which are immaterial to the main issue, and makes some mistakes, which it would take more space, time, and trouble to controvert than we can afford. Indeed, if he was not countenanced by a few persons whose position in the world impart importance to their endorsements, it might be unnecessary for us to notice his article.

In our investigation and discussion of Mr. Hickman's relation to the confederate cause, we are prompted by no mere personal considerations aside from the interests of our country. We have no personal feelings to gratify, for not a word or act of unkindness ever passed between us prior to the Yankee occupation of Huntsville, and we have not spoken to him since, because every one who was here, and with whom we ever conversed on the subject, testified to his exceeding cordial relations with the enemies of his and our country, and some testified to specific acts of disloyalty, which we as a
69 sentinal on the watch tower feel bound to make public, as Mr. Hickman makes a general denial, and thereby challenges investigation; nor do we intend to be diverted from this patriotic duty by personal issues, or deterred by threats of personal consequences. We shall dismiss very summarily the personal allusions to the editor. He says we have "never done anything that I know of to help the war, but a good deal to bring it on." He has not such an association with us as to enable him to know much of our acts, and we shall not be guilty of the vanity and folly of becoming our own trumpeter. One thing is certain, however, that we lost thousands of dollars by the federal occupation; Mr. Hickman admits that he made money by it. We have become accustomed to the old abolition charge against southern men, that they "brought on the war." The salt we sent to him for and received, before the abolitionists occupied Huntsville, was some of the dirty refuse salt used in resalting pork for the confederate army, and left here when the pork was removed; and Mr. Hickman told us to try it, to see whether we could make any use of it, and we could then determine what it was worth. We expected to account for

it in a settlement of mutual accounts of several years standing, in which, we think, the balance would be in our favor, as he has never paid us for five years' subscription to The Democrat, and printing besides.

But if we admit any number of personal obligations to him, they would all be absolved by his disloyalty to our country, whose obligations are paramount. He says one reason he stopped our paper was because we opposed increasing soldiers' monthly pay. Unfortunately for the truth of this statement, we have said nothing on the subject of soldiers' pay prior to his stopping the paper, and our foreman says Mr. H. told him that he stopped it because the editor would not speak to him. Really we were not aware that our negro carrier continued to carry him the paper, or we would have ceased to send it, as we had announced in our prospectus that we wanted no subscribers who were not thoroughly southern. Perhaps this is "one reason" why he stopped it.

But enough of these trivial matters; and now to our duty to our country. Mr. Hickman admits that he bought and sold cotton during the Yankee occupation, but says he paid for a license as a broker under the law of Alabama, and did not know there was any law against buying and selling cotton, for he could hear nothing from Rich-
71 mond. He got a license, we understand, from the city corporation, none being required by the law of Alabama, but he must have gotten a permit also from Gen. O. M. Mitchell, who had published the following order:

HEADQUARTERS OF THE UNITED STATES FORCES,
MIDDLE TENNESSEE and NORTHERN ALABAMA,
Camp Taylor, Huntsville, June 9, 1862.

To protect the cotton planters in Northern Alabama and Tennessee from imposition, it is hereby ordered:

That all persons designing to engage in the business of purchasing cotton shall first obtain a permit from these headquarters.

Those who attempt to purchase without this permit will be promptly arrested by military commanders in Northern Alabama.

By order of—

O. M. MITCHELL,
Major General, Commanding.

B. BUCK, *A. D. C.*

It is inconceivable how Mr. Hickman could be ignorant that it was wrong to sell to the enemy, although they may have been "not connected with the army," in the face of the fact, notorious here, that B. F. Brown, formerly of this county, now of Nashville, had been arrested on a charge of buying cotton to sell to the Yankees, and taken before Gen. A. S. Johnson, while at Decatur, in March last,
72 to answer for it, a fact announced in the Democrat at the time. The illegality of such a traffic with the enemy has been to often discussed in public and private, from the beginning of the war, and besides, it is so universal from a principle of international

law. that scarcely any man can be presumed so ignorant as not to know it. A man's patriotic instincts (if he has any) ought to teach him that it is wrong, and his ignorance of it is prima facie evidence of the want of such instincts.

In addition to this admitted act, which the law of Congress punishes with fine and imprisonment in the penitentiary, we learn from citizens of Huntsville, whose respectability forbid our disbelief of their statements, that Mr. Hickman on one occasion said he had told Gen. O. M. Mitchell, in substance, if he would give him a squad or company, he would go to Jackson county and bring down cotton; on another occasion, that he told the Yankee abolitionists that if he was furnished a squad or company and a cannon, he would clear Jackson county of bushwhackers ; on another occasion, that in reply to the remark that the confederate cavalry would catch and hang him, he said they should never take him alive. We learn, however, that Capts. Hambrick and Gurley did arrest him, after the abolition-
73 ists had left, and placed him under a bond of $20,000.

We learn. too, from numerous sources, that he was constantly in and about the abolition provo marshal's office, and on the most sociable terms with the enemy; and from one unimpeachable source, that he was acting as assistant clerk to the provost on an occasion when our informant was before him. We have other evidences of Mr. H.'s disloyalty, but have not the proof at hand, and therefore forbear respeating them. As we were a refugee from Huntsville, we know nothing of Mr. H.'s conduct during the abolition occupation, and rely entirely on the testimony of others. The public must judge whether or not the facts stated can be explained consistently with his loyalty. If then can be so explained, or he has repented of his disloyal acts, and returned heart and soul to his allegiance to the southern confederacy, we shall be gratified to see the evidence. If he will procure from Gen. Bragg the evidence on which he was released, we will publish it for the public information:

[Extracts from issue of Jan. 14, 1863.]

Military arrests.

James Hickman was rearrested by order of Gen. Bragg, to be taken to Chattanooga on Sunday last, but sued out a writ of habeas corpus from the judge of probate, who granted a hearing at 12 M.,
74 on Monday. Hickman's counsel, Messrs. Walker and Brickell, demanded his release on the ground that no charges were preferred. Gen. Bate, on the behalf of the government, resisted the demand, and asked a postponement till he could hear from Gen. Bragg the grounds of arrest. After considerable argument, pro and con. Judge Scruggs very properly postponed the cause for further investigation till Tuesday next. The confederate District Court will then be in session, and may claim priority of jurisdiction if the military do not hold him.

[Extracts from issue of Jan. 21, 1863.]

Hickman rsleased by writ of habeas corpus.

Our last week's issue announced the arrest of James Hickman, by telegraphic order to Brig. Gen. Bates from Gen. Bragg, on the 10th inst., and his being taken from military custody by the writ of habeas corpus issued by the judge of probate of Madison county. The cause was postponed on the 12th, and came up for hearing yesterday. The Confederate States was represented by Brig. Gen. Bates, Major Clare, and Capt. Beattig; the defendant by Mess. Walker and Brickell and Nich. Davis. The occasion furnished a fine opportunity for forensic display, and was not lost. A great deal of rhet-
75 orical eloquence was expended in indignant denunciation of military tyranny and usurpation, and laudation of the writ of right wrested by the barons from King John at Runnymede, and handed down to us by our British ancestors.

The prosecution moved to quash the writ for want of jurisdiction in the State court which issued it, and cited the 57th article of war, under which the defendant was arrested, which declares that "whosoever shall correspond with, or give information to the enemy, shall be triable by a court-martial, and on conviction suffer the penalty of death; the recent acts of Congress, creating a military court, to accompany each army corps, and making their decisions subject to review, as those of court-martial by the commanding general; and an Alabama statue which gives power to State courts to grant the writ, except when a party is arrested and held by process issuing from some of the Confederate States, or a judge of such court, or where suit against the party has begun already in such court.

The defense denied the legality of the original arrest, and
76 that a military court in any case could have jurisdiction of a citizen; and contending that, admitting such jurisdiction for argument's sake, process had not issued from the military court or any judge thereof, and that General Bragg, not being a member of the military court, had no authority to arrest; and, therefore, the State Court had jurisdiction and was bound to release the defendant

After very able and interesting arguments from Major Clare and Gen. Bate for the motion, and Mess. Walker and Brickell, contra, Gen. Bate having the conclusion, Judge Scruggs decided that no military court could have jurisdiction of a citizen, and consequently the original arrest was illegal, and the defendant entitled to his liberty. He was accordingly released. No evidence was adduced or trial had on the merits. That remains to be done by some other tribunal if it sees fit.

Notwithstanding the ingenious argument of the Confederate States' counsel, unbalancing our judgment, we are inclined to think
77 that Hickman was entitled to his release on the legal ground of want of proper authority to warrant his arrest. We are not prepared to say, however, that a citizen can, under no circumstances, be arrested and tried by a military tribunal. If such is the law it is very defective, and our Congress should make no delay in remedying

the defect. As Gen. Bate and Maj. Clare well remarked, if this doctrine be true, our army, while confronting an open foe, may be subjected to a very destructive fire in the rear from a subtile domestic foe, without the power of self-defence.

[Extracts from issue of 28th Jan., 1863.]

James Hickman has been indicted for treason by the grand jury of the Confederate States District Court now in session at this place. His counsel, Walker and Brickell, have applied for his bail. The application was argued yesterday by them for the defendant, and Dist. Att'y Requier for the Confederate States. We heard only a portion of the argument of the former, and none of the latter. We are informed by several who did hear them, however, that Mr. Requier's argument was able, clear and conclusive to their minds. He argued that no case of treason is bailable. Judge Jones has the question under advisement.

78 George S. Wilson, sworn, says:

I resided here in 1861, 1862, and 1863. The public sentiment against Union men was such that it was unsafe for them to express their opinion. Mr. Robert Dixon was indicted for treason to the Confederate States. I think it was for treason. A mechanic at the railroad, whose name I have forgotten, was obliged to leave by the vigilance committee for his Union sentiments.

Cross-examined.

I was absent from February to July, 1863. I was here continually from January, 1861, to the occupation by the federals. I was molested myself in a drunken spree. I did not consider myself in danger. My status was well known as a Union man, but I never talked politics. If a man did not express his sentiments, he would not be disturbed for them, although the fact that he was a Union man was known.

Henry Pickard, sworn, says:

I lived in Huntsville 20 years. I saw defendant Coltart have plaintiff in custody. He took him from the jail in a buggy, and returned him to the jail.

Cross-ex.

I think Coltart alighted from the buggy. This was during the time plaintiff was confined in jail. I think Coltart was then mayor of Huntsville.

79 Peter Pickard, sworn, says:

The United States flag was taken down from the court-house and the confederate flag put up. Did not see the flag after it was down. Plaintiff proposed to head any set of men who would go and pull down the confederate flag and run up the stars and stripes. That he would rather die than see the old flag dragged under foot. This was about the latter part of February, or early in March, 1861.

H. B. Figures, sworn, says:

I reside in Huntsville, and did in 1861, 1862, 1863 and 1864. I edit and publish the Advocate. I have known the plaintiff for some years. He was a Union man before the war. Don't recollect any private conversation with him. During the war he did acts which complicated him in the rebellion, but I never doubted his Union proclivities. After the federal forces got here, he was openly Union, and was looked upon with great suspicion by the rebel community.

Cross-ex.

I mean by never doubting plaintiff's Union proclivities, that if he had his own free will and choice he preferred the United States government. I cannot say exactly that I believe plaintiff desired the defeat of the federal army at the time he was assisting the
80 confederates, but that if he had his own free will and choice, he preferred that the United States should be the government. I think from plaintiff's temperament, that whatever acts he performed for the confederates was earnestly and honestly performed. I think I saw defendant, Robert W. Coltart, acting as deputy marshal of the court during plaintiff's trial; ordinareally positive of this. Coltart was the mayor of Huntsville.

81 Northern District C't of Alabama.

Defendants' proof.

Defendants, by their counsel, read to the jury the agreed statement of facts, marked filed Nov. 23, 1866, and November 26, 1866, which are as follows:

JAMES HICKMAN
vs.
EDWARD C. BETTS *et als.*

It is further agreed and admitted by counsel for plaintiff and defendants, that early in the year 1861 the State of Alabama, and ten other States of the United States, had, by so-called ordinances of secession, adopted by conventions elected under form of law in said States, abjured or attempted to abjure their allegiance to the United States; that said eleven States assumed to organize, and did organize a government known and styled, "The Confederate States of America;" that said so-called Confederate States was engaged in war with the United States; that the so-called Confederate States occupied and held at the time of arrest, trial and imprisonment of the plaintiff a large portion of the territory of said eleven States, including the northern district of Alabama; that before and at the time of said so-called indictment, arrest, imprisonment and trial, the so-called con-
federate government enforced the obedience of the people of
82 said northern district to the laws and government of the so-called Confederate States, and all the power and authority of the government of the United States were, before and at the time

of said indictment, arrest, imprisonment and trial, usurped and occupied by the so-called confederate government, the authority of the government of the United States being forcibly excluded by said so-called confederate government, its courts closed, and its laws not enforced in said northern district, and before and at said times the government of the United States was not affording protection to the people of said northern district, and was not exercising the functions of government within said northern district; that before and at the said time, the so-called laws of the so-called Confederate States were enforced and in operation in said northern district.

That the plaintiff and defendants were, when the said so-called confederate government was established, and when said indictment, arrest, imprisonment and trial took place, citizens of said northern district of Alabama. That the so-called congress of the so-called Confederate States passed laws, organized the so-called court for the said northern district of Alabama, and the said so called court
83 in which the plaintiff was indicted and tried was held under and in pursuance of said so-called laws.

The printed volumes containing the so-called acts, &c., of the so-called congress of the said Confederate States, may be introduced in evidence, and the laws organizing said court, and the provisional and permanent constitution of the so-called Confederate States, and other laws, or part of laws, contained in said volumes, that may be pertinent, may be read in evidence as the acts and doings of said so-called congress. The books containing the minutes of said so-called District Court of the Confederate States for the northern district of Alabama, if to be found, may be introduced, and such parts thereof as relates to the organization of said so-called grand jury, or to the proceedings against the plaintiff, may be read in evidence.

That the defendants, except Robert W. Coltart, J. Withers Clay, and Benjamin T. Moore, were summoned by the so-called marshal of the said so-called court to serve as grand jurors for said court, at the term when the plaintiff was indicted, attended under said summons, and would have been subject to penalties and forfeitures, if they had refused to attend and serve as such grand jurors.

84 That A. J. Requier acted in the capacity of district attorney for the so called Confederate States, at said term of said so-called court, having been appointed as such by the President of the so-called Confederate States, and that the said Requier, as such district attorney, prepared and presented said bill of indictment to said grand jury.

This November, 1866.

(S'g'd) SMITH, HUMPHREYS & GANT,
Attorneys for Plaintiff.

(S'g'd) BEIRNE & GORDON,

(S'g'd) ROBINSON & WALKER,
Att'ys for Def'ts.

Endorsements: James Hickman, 152 *vs.* Ed. C. Betts, *et als.* Agreement of council filed Nov. 23, 1866. L. W. Day, cl'k, D. C.

In the District Court of the United States of America for the northern district of the State of Alabama, at Huntsville.

Agreement of councel.

JAMES HICKMAN *vs.* EDWARD BETTS, THOMAS S. MCCALLEY, SAMUEL COLTART, SAMUEL MATHEWS, JOHN W. COOPER, JAMES H. MASTIN, WILLIAM LARKIN, ENOCH ALDRIDGE, SAMUEL ELLIOTT, WILLIAM GRIFFIN, STEPHEN W. HARRIS, ROBERT W. COLTART, JOHN WITHERS CLAY, and BENJAMIN T. MOORE.	November term, 1866.

85 It is agreed by councel on both sides that on the trial of this cause the files of the Huntsville Confederate for December, 1862, and January, 1863, shall be introduced without proof, and it is admitted that the editorials therein were written by J. Withers Clay, one of the defendants.

It is also agreed between the councel on both sides that a printed card, bearing date January 3, 1863, and addressed to the people of North Alabama, and signed James Hickman, may be introduced in evidence without further proof, as having been written and published by the plaintiff in this case.

Huntsville, Alabama, November 24, 1864.

SMITH, HUMPHREYS, and
JOHN C. GANT,
Atty's for Pl't'ff.
BEIRNE & GORDON,
ROBINSON & WALKER,
Att'ys for Def'd'ts.

Endorsements: No. 152. James Hickman *vs.* Edward C. Betts *et als.* Agreement; filed Nov. 27th, 1866. Lionel W. Day, cl'k D. C.

Zebulon P. Davis, sworn, says:

I have resided in Huntsville for the last 18 years. In 1861 I was mayor of Huntsville. During the year 1861, I knew nothing to the contrary that it was safe for a Union man to express his sentiments. I have known instances of their doing so in safety. Judge Lane did, and was never molested; Alexander Johnson did, and was not
86 molested to my knowledge. I knew men from the north, quite gentlemanly persons, who were Union men, and who I think felt themselves safe. In 1861 I was very generally acquainted with the Huntsville community. I had been mayor 5 or 6 years before 1861. I knew the plaintiff.

By defendants' councel:

Question. Do you know any facts touching plaintiff's complicity with the rebellion?

Objected to by plaintiff's councel, upon the grounds that it is not admissable under the plea of not guilty in bar of the action or in mitigation of damages; and upon the further ground that the question does not confine the inquiry to facts which occurred before the plaintiff's arrest and imprisonment.

The objection is overruled by the court, to which action of the court the plaintiff, by his councel, excepted at the time.

Witness states: I know of a fact that occurred perhaps in 1863. It was in 1863, but after July the 14th, 1863, but when after this I do not know. I was on the public square; there was 3 or 4 confederate soldiers there. Plaintiff said to the soldiers: Go away boys, you will be killed or captured; the federals are all around here. The young men thereupon rode away. After the first occupation of Hunts-
87 ville by the United States troops, and after September, 1862, but during that year, I had a conversation with Hickman, in which he said he had been ground to the earth with debt; that his object had been to make money, either out of the federals or the confederates; that he had made one hundred thousand dollars in gold. I had expressed surprise at plaintiff course in mixing up with federals more than I thought he ought for a confederate, as I thought he was. Nothing more occurred then. It was in answer of my expression of surprise that plaintiff told me his object, &c. Between January, 1861, and April, 1865, I can't answer whether plaintiff was a Union man or not. I don't remember anything more than I have stated. The United States troops came into Huntsville in less than twenty minutes after plaintiff warned the young men.

Cross-ex.

The conversation I had with plaintiff was after his arrest by the confederate military. I don't believe a man would have been injured in 1862 for the moderate expression of his opinion.

Charles A. Donegan, sworn, says:

I reside here; I am 25 years old; I was born here. I know Hick-
man. In passing, I stopped at Hickman's and conversed about
88 the war. He said if I would assist him he would get up a good company for the confederate service. This was either between the first of May and 1st of September, 1861, or between 1st of January and 1st April, 1862.

Addison White, sworn, says:

I reside here, and know plaintiff. In 1861 plaintiff and I met at Vienna. He was a candidate for major general of militia, and if my recollection serves me, made a speech to induce enlistments in the confederate service. We rode from Vienna to Huntsville together. The expression of his sentiments was unqualifiedly confederate. About the time plaintiff issued his card I expressed my regret that the controversy should have occured. He said he was a better confederate than J. W. Clay and all the Clays. He said he had con-

tributed more to the support of confederate soldiers than all the Clays. What he said I understood to be a reiteration of his card.

James Woodruff, sworn, says:

I know the plaintiff, and have for some years by sight. In the fall of 1861 plaintiff was in Mooresville at a meeting to raise volunteers for the confederate service. He said in a public speech made
89 on that occasion that he had no son himself, but had raised the postmaster general, and was grand of him. The general substance of his remarks was encouragement to the boys to enlist. He spoke of the interest he had taken in the raising of volunteers at Huntsville. It was about the time Humphreys was raising his brigade at Decatur.

Robert C. Smith, sworn, says:

I have known the plaintiff for 13 years. I know that after his return from a visit to East Tennessee, in 1861 some time, he said he had visited Cleaveland in Tennessee. That he had a great deal of conversation with friends there. Had talked with Judge Gant, and had pursuaded him to be passive. He had an argument with Mitch Edwards, at Cleaveland, on the subject of our difficulties. That when he was leaving Cleaveland he was attempted to be chastised by five or six men for his confederate sentiments, but he had placed his back against the wall of the depot, and defied and cursed them all.

Cross-ex.

I can't tell whether this occurred in the fall or summer of 1863. There may be a little impression of unkindness in my mind
90 against plaintiff, growing out of his participation in public affairs.

James Johnston, sworn, says:

I can't remember the precise dates, but I did converse with plaintiff at my house in Huntsville. We talked about the defection of East Tennessee to the confederate cause. He went to East Tennessee and returned; after his return he told me he had made speeches there. During the same summer he was angry about a company he raised for the confederate service; he said the outside pressure had defeated him for its captaincy, notwithstanding he had fed them. About the time the Humphreys brigade was being raised he wanted me to help. He wanted my partner to do so. I talked to plaintiff in 1863 I was juror that tried him on the indictment for treason. He said he was as good a confederate as I or Clay, who was trying to hang him. He differed from the cotton policy of the confederate government. He had let soldiers' wives have salt as a charitable deed to aid the confederacy.

Cross-ex.

In 1861, 1862, or 1863, if the Union men had been noisy in the declaration of their sentiments the military would have arrested

them. I know that when Patterson was United States mar-
91 shal Coltart was his deputy.

Zebulon Davis, recalled by defendants.

Question by defendants' counsel. Were the relations between yourself and plaintiff at the time of the conversations you have detailed intimate or otherwise?

Answer. We were friendly; I was never very intimate with plaintiff.

John T. Hayden, sworn, says:

I have known the plaintiff for several years; we talked together frequently. I saw him while they were drilling troops at Owens' cross-roads. On that occasion he expressed himself favorable to the confederate cause; I think he made some remarks at Vienna. On one occasion, in Huntsville, plaintiff said he saw Niel S. Brown, of Tennessee, who had shown him a bayonet to be adjusted to cavalry arms, that would be effective. I was engaged in buying guns for L. P. Walker, who was a brigadier-general in the confederate service. Plaintiff kept a hotel in Huntsville at this time. It was late in the fall of 1861 when I saw plaintiff at the cross-roads.

John Dement, sworn, says:

I have known the plaintiff for ten years. In the summer of
92 1861 he told me he had raised a company for the confederate service. He frequently advised with me in regard to a company I was raising for the confederate service as to the best plan of organization; I cannot state his precise language. I met plaintiff at Decatur. He told me he was quartermaster for Humphreys, and as such assigned my company quarters. He told me if Humphreys would let him have his way he would have those troops in the service in a short time; that he had a letter from Nashville which led him to believe he could obtain the arms and equipage. I met plaintiff at Owens' Mills, and he assigned me to quarters. In June, 1862, I met plaintiff at Huntsville during the federal occupation of the town, Gen. Buell's or Mitchell's headquarters being here at the time. Hickman asked witness if he knew of any one who had cotton to sell. Witness expressed surprise that he was engaged in the cotton trade. Hickman said he had now a good opportunity to make money, and said, in substance, that his heart was in the confederate cause. Humphreys' brigade was broken up for want of means to sustain it.

James M. Robinson, sworn, says:

I reside in Huntsville, and have known plaintiff for ten years.
93 In the fall of 1863 I came into Huntsville with a small force of confederate soldiers. Plaintiff advised me to get out of the way as soon as possible; that the federals were coming. I left in a few minutes; the United States troops came in soon after.

Cross-ex.

I did not come into Huntsville to arrest plaintiff. I had with me six or eight men and a non-commissioned officer. I was a captain.

Joseph Winston, sworn, says:

I have known plaintiff 13 or 14 years. I have heard him remark he was as good a southern man as I or any one else. This was in 1862, during the federal occupation.

W. H. Powers, sworn, says:

I have resided in Huntsville for the last 47 years. In my opinion it was safe for a Union man to to remain here in 1861, 1862, and 1863. I considered myself a Union man, although my sympathies were with the people.

Cross-ex.

I left here in 1864; I went to get clear of the troubles of the war. I did not choose to go south, and did not want to remain here. A man named Gallop left here on account of his Union sentiments. He was mechanic at the railroad depot.

94 Witness William Sprague testified:

I think I know who were the deputies of Patterson, Confederate States marshal. I was principal deputy; two or three others acted for a time. I am satisfied Robert W. Coltart did not do any court business for him; he acted as auctioneer for Patterson. I do not swear positively that Coltart did not act in the court for Patterson as deputy. Plaintiff stored some stores for me belonging to the Confederate States.

Witness William J. McCalley testified:

I have known plaintiff fifteen or twenty years. In the spring of 1861 I heard plaintiff make a speech at the court-house, urging volunteering for the confederate service. After the speech he said, "We old men must take hold of this thing; if we don't, the young men won't; I will die in this cause."

On cross-examination witness stated: "I am brother to one of the defendants. My feeling towards plaintiff are unpleasant."

Robert C. Brickell, witness, testified:

I was one of plaintiff's councel, and was present in May, 1863, when he was tried on the indictment for treason. I have no recollection that Coltart was an officer of that court or of the marshal.

95 Witness James H. Mastin stated:

I am a defendant in this case. I was one of the grand jury that indicted plaintiff. After the trial upon the indictment plaintiff and I conversed together; we shook hands. He said he did not blame the grand jury for finding the indictment against him; that they could not help it on the testimony before them. He did blame McCravy for trying to swear away his life.

Questions by defendants' councel:

Was Mr. Requier, district attorney, present with the grand jury? Answer. Yes.

Did Requier, after the testimony was closed, give to the grand jury his opinion of the testimony and their duty in regard to it?

(This question was objected by plaintiff's councel, and the objection sustained by the court.)

Question to same witness. In finding the bill of indictment against plaintiff, were you actuated from malice?

(Plaintiff, by councel, objected to this question; the objection was overruled by the court, to which ruling of the court plaintiff, by councel, excepts.)

Answer of witness to the question. I was not; we were sworn in the usual form.

On cross-examination witness stated:

No one but Stephen W. Harris, plaintiff, and I were present at the conversation. Harris is a defendant in this suit.

96 Witness Stephen W. Harris testified:

I am a defendant to this suit. The conversation Mastin testified to occurred. I think there was several others present.

Defendants' councel read to the jury the circular of plaintiff dated January 3, 1863, which is follows, to wit:

97 To the people of North Alabama:

It becomes my duty, under the circumstances, to lay before the citizens of Alabama and the balance of the Confederate States my acts during the war, since it commenced, to the present time, which I will do frankly and honestly: In the first place I raised a company, and got the uniform at considerable expense. I boarded a good part of the company at my own expense; but my company was broken up by divisions among themselves. If my company had been received I would have now been in the service. After my company was broken up I went with Col. D. C. Humphreys, and assisted him in raising a brigade, and spent the most of the summer of 1861 in that business. We went into camp at Decatur, and staid there four or five weeks, and paid our own expenses. The brigade was not received by the Secretary of War. I was the first man on the ground. I went, several days before the companies came in, and had the ground prepared for them. When Fort Donelson fell and our army had to retreat to Mississippi, a large lot of commissary stores were sent to this place. I assisted Col. J. C. Bradley in taking care of them and shipping them to the army. When the army was here I tendered them my house for a hospital, which they accepted. Upwards of two hundred at one time occupied it;

98 and when companies were coming in and had no tents to shelter them from the inclemency of the weather, I gave them quarters in my house, and I have at all times contributed to soldiers

and their families as much as I was able. When the federals came to Huntsville they took possession of part of my house for officers, and it was surrounded by the guards day and night, by which I got acquainted with the larger part of their officers; and they treated me and my family very well, and I had no choice but to treat them civilly, as I was in their power. While they were here the cotton market opened, and I thought I saw that the cotton would be taken by force if it was not sold. I was in debt, and my property had been sold at great sacrifice, and the time for redeeming it was running out, and I went into the cotton trade, paying a license as a broker under the law of Alabama. I bought and sold it, but not to any one connected with the army. Had I not have done that I would have been turned out of house and home, without money, rich friends or kindred, with an old mother ninety odd years old, a sick wife, and an infant grandchild. At the time I did not know there was any law against buying and selling cotton, for we could hear nothing from Richmond. As soon as I found it out I stopped,
99 and went into furnishing provisions for the people in this place. I bought a great quantity of provisions of all kinds, and sold them as low as any one in the place. I bought three slaves also, for my own use, which I would not have done if I wanted to join the federals. I have sold salt at from $20 to $75 per bbl., and for all kinds of money. I sold salt to soldiers and their families at the same price in currency I did to others in gold, which I am able to prove; and I sold to some families without money. I can show my bills of the salt I have sold, and if any man will say it is more than the common price I will refund. The most of the salt I sold on commission, for which I got ten per cent., and I had to follow instructions.

I have been trying to do the best I could for the people. I tried to get into the service and was defeated. I then thought I would make myself as useful as I could. I am a southern man born and raised, with all the feelings of a southern man, and never was north of Mason's and Dixon's line in my life; and now I must be hunted down by a man that has never done anything that I know of to help the war, but a great deal to bring it on—I mean J. W. Clay. He has tried to create all the prejudice he could against me by publishing my arrest, and has stated things which I am able to prove are not true, and hold myself responsible for what I say in
100 any way.

Now, John H. Clay, what have you done for the confederacy? Have you fed any of the soldiers' families? Have you presented them with any bacon? I have done so. Have you furnished them salt? I have for money, and without money. Have you thrown open your doors and invited the hungry soldier to come in? Have you given one a pair of shoes or stockings, or clothes of any kind? I have; and you recollect that when you was out of salt, and I divided with you, I sent you a half bushel, and neither charged or received pay. Now, tell the people what you have done since the war broke out, and let the people know which has done the most.

When the federals left here they took out of my house 149 barrels of flour, and 26,224 lbs. of bacon, and burnt it up before my eyes, and hundreds of others saw it. Since that time I have never been inside their lines but once, and then I went at the request of Capt. Hambrick and Capt. Gurley, to try and get out of the penitentiary Alfred Hambrick, Ira Cobb, and Parson Driskell. In all my social relations with the federals my object was to try and be as useful to the citizens as I could.

Of all the bacon, flour and salt the federals took from me I have never received one cent; and if I had been such a favorite as
101 Mr. Clay tries to make me out, they certainly would not have destroyed my property as they did without paying me for it.

Mr. Clay says in his paper of 31st of Dec. that there was nothing during the war that caused more general surprise here than the release of myself. I laid the facts before Gen. Bragg, with all my acts since the commencement of this war until the present time; and after waiting four days, to give them time to look into them carefully, I was discharged, and they gave me a passport to come on the cars, with my servant, when no one was allowed to travel on the cars unless he had a pass from Gen. Bragg, as troops were moving to Mississippi. I came with Gen. Stevenson's brigade as far as Stevenson.

As I have stated before, when the federals came here they took possession of my house; my family was living in the house, and was not able to get out, and I had to treat them kindly in self-defence. The only weapon I had to fight them with was kindness. We were powerless, and had nothing to defend ourselves, and I thought I would make the best I could out of it, and do the best I could for the people, as well as myself, which I did do in many cases, and I thought I was doing for the best, and I stopped at nothing I could do when I saw any man in difficulty. I thought I would be
102 applauded by the people, but instead of that I am accused by Mr. Clay of being disloyal. In several instances I came near being mobbed by the soldiers by going into camp to get negroes that belonged to citizens. A few days before they left I went with Mrs. J. H. Hobbs, Mrs. Joseph Morris, and Miss Campbell, to get some of their negroes, and the soldiers came out and threw rocks at me, and it was all I could do to save myself. Had it not been for some of their officers I never would have got out alive; and to think I could have any sympathy with such men as tried to take my life is too much for belief, particularly of one who was born and raised in the south.

To prove the confidence I have in the south I have bought several slaves, as I have stated above, since the federals left here. All the property I have is in the south, and I am willing to sacrifice my life, property, and all I have for the southern institutions. I have served three campaigns, and I am willing to do all I can for my country and my country's cause. I am now 53 years old, and if you will go, Mr. Clay, I will go. You seem to think it is a light job, as you think $11 per month is enough for the soldiers. Now, John, let us try it, and you will find it not as light a job as you imagine.

103 To think of a man sitting at home by his fireside, sleeping upon feather beds and downy pillows, while the poor soldiers are marching through mud and water, with their knapsacks upon their backs, and their muskets upon their shoulders, sleeping on the ground, with nothing but the canopy to cover them, and then you say $11 a month is enough. You ought to blush, when you see a soldier, with shame. That is one reason I sent your paper back when you sent it to me by your boy. If you thought I was disloyal, why did you send me your paper, and when I refused to take it you then took it for granted that I was disloyal. If that is the rule, John, I suppose you will find a great many disloyal men in this country and in this town.

Huntsville, Ala., Jan. 3d, 1863.

JAMES HICKMAN.

104 Robert W. Coltart, one of the defendants, sworn, says:

In May or January, 1863, my best recollection is I had no official connection with the court. I am positive I did not conduct plaintiff from prison to the court at any time. In May, 1863, at Gen. Patterson's request, I went to the jail where plaintiff was confined. I took him in my buggy to the headquarters of Gen. Pillow, and waited for him there nearly an hour and a half. Plaintiff during this time was inside. I afterwards took him from the headquarters of Gen. Pillow back to the jail and he alighted while I was yet in the middle of the street, and I left him there. The whole affair was a voluntary act on the part of the plaintiff, and as I understood for his benefit. I conversed with plaintiff frequently. I recollect one conversation. He reprimanded me for not having given in my adhesion to the confederate cause. He said he was into it heart and soul.

The constitution of the Confederate States, and the acts of the confederate congress, as contained in the printed volumes of said acts, were put in evidence by the defendants, with leave to refer to any part of the same pertinent to the cause, and the same benefit may be derived from the use of the same in the Supreme Court of the United States as if copied in the bill of of exceptions.

105 *Plaintiff's rebutting proof.*

Nich Davis recalled, says:

In 1861 the public sentiment was hostile to Judge Lane. Robert I. Lowe, a brother-in-law of mine, came to me and stated that a party of men had sent him to me to know what I would do if an attempt was made to murder or export Judge Lane. This, it was said, was the intention of the community. I told him I would resist. I told Lowe I did not endorse what Judge Lane said or did.

Defendants' counsel moved the court to strike out this testimony from the record, and for an instruction to the jury that it must not be considered by them, which motion was refused by the court.

The witness further testified that it was not known in the community, before the occupation of Huntsville by the federal forces, that Lane had been appointed a federal judge.

Cross-ex.

Col. Tracy left here in 1861. I did not myself know that Lane had accepted the United States judgeship until the United States force came here, although we were brothers-in-law, and very intimate. It was currently reported in the community that he had been appointed, but the fact is he did not accept it until April, 1862, when the United States forces came here.

The counsel for the plaintiff and defendants submitted to the jury an argued statement of the amount of money actually expended
106 by him in and about his imprisonment and defense in the case of treason, which statement is as follows:

Walker and Brickell's fees were $2,000; James Robinson's fees were $500; Nich. Davis's fees were $500.

That the wages of guards was $4 to $5 per day; that their board for them was $1 50 per day; that Hickman was to pay cost of Gen. Walker's attachment, say $15.

This was all the proof in the cause. After the argument of council on both sides, the court charged the jury as follows:

107 Gentlemen of the jury: This action is brought by James Hickman, a citizen of Tennessee, against the defendants, citizen of Alabama, to recover damages for an alleged malicious prosecution and false imprisonment. The plaintiff lays his damages at the sum of one hundred thousand dollars, and the question of his right to recover is now to be submitted to you upon the evidence that has been adduced and the law applicable to and controlling it.

The circumstances out of which the present action has grown are great public facts, many of which have gone into the national history. In 1860, the quadrennial election for President and Vice-President resulted in the choice of Abraham Lincoln, of Illinois, and
108 Hannibal Hamlin of Maine, respectively. The leaders of the people of the southern States determined not to abide by the result, and led their communities into the belief that the election of Mr. Lincoln was equivalent to a settled purpose of the north to coerce the south into the abolition of slavery, and to deprive its people of rights solemnly guaranteed to them by the organic law. Rebelion was thus inaugurated, and State after State joined the South Carolina insurgents, until eleven of the States composing the supreme federal government joined the compact to destroy it. This rebellion called to its aid the vast material resources with which the territory was laden, and their use was directed with a vigor and comprehensiveness worthy the best cause. Immense munitions of war, terrible in their destructiveness, numerous armies of men, irresistible only to bravery and endurance equal to their own, brain and muscle, the pen and the sword, were summoned to the work of establishing the new order of things. Month by month, and year by year, the struggle for empire was kept up with a determination on both sides that appeared invincible even to defeats. The land was reddened with humane gore, the atmosphere darkened with sulphur smoke, and the air filled with groanings of the wounded and dying. This awful satur-

nalia of blood and treason found its climax in the cowardly
109 assassination of the President of the United States, and gave the name of Lincoln to the chief roll of liberty's martyrs. After years of resistance the power of the rebellion was broken in twain, the authority of the United States completely re-established, and its sovereignty acknowledged and exercised throughout the war. The indestructibility of the Union became, and was and is an accomplished fact. All thanks to God for our country saved and its nationality perpetuated.

It was in the month of January, 1861, that Alabama joined herself to the enterprise of erecting the proposed confederation of southern States, and from that time, with casual and local exceptions, to the time of Lee's surrender to Gen. Grant, she repudiated the authority of the United States and acknowledged the paramount authority of the Confederate States. During this period the transactions occurred out of which the present suit has grown. The plaintiff, Hickman, was a resident of Huntsville, and the defendants resided in Madison or adjoining counties. The plaintiff was indicted in the District Court of the Confederate States for northern Alabama on a charge of treason against them, and upon this indictment was arrested, imprisoned, pleaded "not guilty," tried, and acquitted. The defendants, Betts, McCauley, Samuel Coltart, Matthews, Cooper, Martin, Larkin, Eldridge, Elliott, Griffin, and Harris, were members
110 of the grand jury that found the bill. The defendant Robert W. Coltart, it is alleged, was the deputy marshal who executed the warrant of arrest, or who, subsequently to it and under it, restrained the plaintiff of his liberty. The defendant Moore was the clerk of the court with whom the indictment was filed; and the defendant John Withers Clay the editor of a newspaper, called the "Confederate," published at Huntsville at and before the time of plaintiff's arrest and trial; and it is claimed he incited or influenced the prosecution by malicious writings intended to secure that result.

To the declaration of the plaintiff the defendants have pleaded "not guilty." Under this plea all the circumstances of the original arrest, the imprisonment and the trial of the plaintiff, have been allowed to be put in evidence before you; and upon this evidence, and the instructions of the court in respect of it, you are to shape and render a verdict.

Before proceeding to discuss the questions involved, it is proper I should say to you there is no evidence in the case to charge the defendant Clay. It were a dangerous precedent to find a man guilty of originating a criminal prosecution against another on the
111 ground of writing malicious editorials calculated to inflame the public prejudice or to pervert its judgment. These, in themselves, are grave offenses, and to the shame of the American press, of such frequent occurrence as to make the exception to the rule a noticeable fact. The guilty in this respect deserve punishment, but the penalty and the remedy for libel are distinct from the penalty and the remedy for malicious prosecution. In these remarks I do not wish to be understood as expressing any opinion as to the char-

acter of the newspaper criticisms complained of; that question is not before me. The defendant Clay is entitled to your verdict.

And as it respects the defendant Robert W. Coltart, it is proper I should remark here, that the only testimony offered by the plaintiff to connect him with the prosecution in the confederate court, is the belief of two or three witnesses that he acted in the capacity of an attendant upon its sitting; and the evidence of Henry Pickard, that upon an occasion during the imprisonment of the plaintiff he saw the defendant Robert W. Coltart take him from the jail in his light wagon and return with him to the jail. If the case, as it respects Coltart, stood where it was left by the plaintiff's proofs, it would have been my duty to submit the question of his alleged par-
112 ticipation in the prosecution, to your judgment; but the evidence of Mr. Coltart, which is not contradicted, disposes of the matter. He testifies that he had no official connection with the confederate court at either the term when Hickman was indicted or when he was tried, and he explains the circumstance of his having Hickman in a wagon. It appears that as an act of kindness he took the plaintiff to military headquarters to enable him to transact some business he had with Gen. Pillow. This is the version of the transaction given by Mr. Coltart, and if it was incorrect the plaintiff could have controverted it upon the witness stand. He has not done this, and upon the proofs I charge you that the defendant Robert W. Coltart is entitled to your verdict. The discharge of the defendants Clay and Robert W. Coltart leaves the case as if the defendant Moore, and the defendants who acted as grand jurors in the court of the confederate were the only persons sued, and brings us face to face with the defense interposed by them, and to a consideration of general principles applicable to it.

The defense divides itself into a denial of any legal liability on account of the acts complained of, and a claim that if by the judgment of the law the defendant's act must be declared to be at least technically violative of the defendant's rights, he is yet entitled only
113 to technical damages because of the public circumstances under which they transpired, and the plaintiff's own alliance with them.

The first branch of the defense goes to defeat the right to any recovery. It is based upon the proposition that Alabama, in the exercise of an inherent right, had joined other States of the Union in a league to establish a government independent of the United States, and antagonistic in its sovereignty; that these States did actually ordain such a government under the name and style of the Confederate States of America, with its powers and duties appropriately lodged in executive, legislative, and judicial departments; that it maintained an army and a navy; that it had capacity to enforce and did enforce its decrees and will even to the extent of taking the life, the liberty, and the estate of citizens; that the parties to this suit were citizens of the State of Alabama at the time of the transactions complained of, were subject as such to the authority of the central government of the Confederate States; and that the defendants could not

have refused to act in the capacity thrust upon them by its laws without being liable to the pains and penalties provided in those laws; that a law of the Confederate States created a court known as the District Court for northern Alabama, with jurisdiction of the
114 offense of treason against the confederate States and for the empannelling of juries therein, and the punishment of persons who neglected or refused to serve thereon; that the defendants, except Clay, Moore, and Coltart, were summoned to serve as grand jurors in that court, and that all the acts complained of, so far as they are concerned, were performed in their capacity as such jurors. The defendant Moore relies upon the same matters as an answer to this suit.

This defense, it will be seen, is based upon the proposition that the parties to this action were all subjects of a de facto government to which they owed allegiance, and also that the struggle of the Confederate States for independence was a civil war according to the recognized principles of international law, and secured to the belligerents, from each other, as matter of right, all the immunities and privileges accorded by the law of nations to the subjects of sovereign States at war with each other; and if it were true that the late rebellion in the United States is entitled to the consideration thus claimed for it, this defense would be perfect; that it is not true I will proceed briefly to show. In doing so I can only state general principles
115 in a cursory manner. It is not to be expected that a judge at nisi prius shall accomplish the task of a historian, or that his charge to the jury should have the precision and elaborateness that belongs to the treatise of a publicist. A careful and pains-taking judge may be borne with, if on a trial like this he mistakes the law in something. If he does, an appellate tribunal delivering its judgment free from the distractions which accompany our sittings, will be sure to correct his error. It is contended by the defense that every citizen of a State of which he is a member, is bound to serve and defend it as far and as long as he is able. This proposition may be conceded. The rule is laid down by Halleck (chap. xxi, sec. 1 that "when a State has declared war every citizen is bound to assist in carrying it to a successful conclusion, whatever may be his individual opinion of the necessity or propriety of the resort to arms by his own government."

At this point the question occurs: What constitutes a State? This may be answered by the single word, "sovereignty," Not merely the actual possession of all the powers of government exercised over its immediate subjects, but a sovereignty recognized by other of the sovereignties of the earth. A sovereignty that secures the State a place in the great family of States. The recognition
116 of which I speak is never initiated by judicial declaration. The question is exclusively a public one, belonging to the political departments of States, and until these departments act upon it, the judicial departments are obliged to refrain. "The sovereignty of a State," says Halleck, (chap. 1, sec. 18,) "is acquired either at the origin of the civil society of which it consists, or when it sepa-

rates itself from the community of which it formed a part. All questions, with respect to the origin of States, belong to the province of political philosophy rather than to that of international law. The sovereignty of a State, as considered in international law, is not determined by the character of its origin, the extent of its power or domain, &c., but by its relations to others, and its capacity to deliberate and act for itself."

I next enquire, was there any recognition of the Confederate States as a sovereign? Was their claim to nationality admitted by any of the independent powers of the earth? Does the fact that neutrals gave them the rights of belligerents determine the question of their sovereignty in the affirmative? Or does the fact that the parent government itself treated with them on some subjects as bel-
117 ligerents are treated with, foreclose a denial of their claim to be treated as an established sovereignty?

There is no pretence that the independence of the Confederate States was acknowledged by any of the sovereign States of the world. And it is well settled that if a neutral accord belligerent rights to an insurgent, this is not an acknowledgement of his sovereignty. There is no difficulty, either, in defining what status the insurgents take by the act of the mother country in treating with them as if they were belligerents. The parent State, at any time during the revolt, may in the interests of a common humanity, or for the purpose of weakening the resistance, or from any concealed motive, treat with the rebels for the exchange of prisoners of battle, and receive flags of truce, and agree upon an armistice. It will not be seriously contended that these acts are to bind the State to a recognition of the actual independence of the rebels. Add to this that the revolt failed, that the authority of the parent State was fully recovered, that there was neither success nor recognition, and you have a rebellion simple and unmixed. We have not here even the example of the usurpation of the government. During the whole rebellion the parent government continued in the exer-
118 cise of all its functions over the greater portion of the territory. It never intermitted its efforts to subdue the insurgents. Step by step it recovered its possessions from their control, until their complete dispersion and capitulation. The attempt of the Confederate States stands a rebellion proven, and a rebellion confessed. It has none of the features that distinguished the protectorate of Cromwell. There the whole government of England was usurped, the great majority, almost the entire people, submitted to the usurpation. There was no continued or extended actual opposition to it; all the laws of the realm, and the form of their administration, were observed as they had been during the kingship of its monarchs. Its professed objects was to preserve the government of England, not to destroy it, or to erect any other or different government in its stead. The attempt of the American insurgents and their object was to overthrow the government of the United States, and to establish to government of the Confederate States in its place.

It follows, then, though it be admitted, that a person owes alle-

giance to his State—there was here no State—and allegiance cannot be predicated of a nonenity. As a consequence, the acts of the defendants receive no sanction from the public circumstances
119 under which they were committed. These acts never had a legal inception, were a trespass "ab origne," and everything done in furtherance of them a violation of the plaintiff's rights. Judge Nelson, of the United States Supreme Court, in the case of the Savannah pirates, says: "No rights or protection can accrue to individuals under Confederate laws. They were enacted without lawful authority, and against the policy, laws, and Constitution of the United States, and the courts are bound to treat them as if they had never been promulgated." Apply the doctrine thus enunciated by this learned judge to the present case, and it follows that in contemplation of the law there never was such a court as the Confederate States District Court for northern Alabama; there never was such an official as a judge, district attorney, or clerk thereof, and there never was such a body as a grand jury of such a court. Any direct assault committed by virtue or under color of its authority, or by its direction, was a trespass vi et armis, contrary to right, in defiance of the law of the land, and, if the person so maltreated be himself free from blame, entitles him to a verdict for actual and exemplary damages.

So much time has already been consumed in this trial, the arguments and addresses of counsel have been so diligent and exhaustive, and you have given such creditable and patient attention to
120 the proofs, that I do not consider it necessary or expedient for me to refer in detail to the testimony on either side. It is, doubtless, fresh in your recollection, and, if you have any difficulty on the subject, you can apply to the court for knowledge of what is upon its minutes. The law commits to your keeping and decision the facts. They are within your exclusive jurisdiction. You believe or you disbelieve witnesses precisely as your conscience and your intelligence demand, and are accountable for your verdict on the facts only to God. The law you will receive, as you are bound to do, from the court. I am satisfied you are not disposed to invade its province, and the court gladly abstains from interfering with or attempting to influence yours.

And first, I charge you as the law of the land, that, if it be established to the satisfaction of a jury that a plaintiff who brings suit in the national courts to recover damages for injuries received at the hands of rebels against the government, himself engaged in the treason, he cannot use the courts of the nation to punish his coconspirators for acts prejudicial to him, but connected with their common crime. To allow this would be to affront the dignity of these tribunals, and invalidate that "even-handed justice which commends the ingredients of the poisoned chalice to our own lips."

If, in the case at bar, you believe that the acts and speech
121 of the plaintiff, upon which the defendants rely to prove his complicity with the rebellion, were the result of anything less than a fear that if he did not so speak and act his life, or his liberty,

or his property, would be sacrificed to his silence or his omission, you will find a verdict for the defendants. If, on the other hand, you believe that these acts of apparent complicity with the rebellion were performed by the plaintiff under the influence of an honest and rational apprehension that to do otherwise would expose him to persecution, or loss of life, liberty or property, and that, notwithstanding those acts of affiliation with the rebel community in which he lived, he was always at heart honestly and truly loyal to the government of his country, he is entitled to your verdict. And in considering this question you must weigh all the then attendant circumstances under which his conduct was had. The occupation of Huntsville by the enemies of his country, the existence of a rebellion, and the difficulty of passing through the lines of the insurgents, the hostile local public sentiment, and the fact that after the expiration of three months from the passage of the ordinance of secession by Alabama, in January, 1861, it was not safe for a Union-loving and law-abiding citizen of the United States openly and resolutely to oppose the rebellion; these are all proper and important to be
122 considered, and should have due influence upon your minds in making up a conclusion.

The first enquiry for you then is, was the plaintiff Hickman at heart always honest in his loyalty to the United States, notwithstanding his speech and act? If you find that he was not at heart always true to the United States, and that his acts of apparent sympathy with the rebellion was a true index to the real state of his mind, you may stop at that point in your investigations, and return a verdict for the defendants. If, on the contrary, you find that while professing sympathy with the insurgents, and apparently willing to serve their cause, he was nevertheless always at heart faithful to his allegiance to the United States, and that he acted under duress when he appeared to be otherwise than loyal to the federal government, you will then proceed to assess his damages, and render a verdict for him for all the actual damages he has sustained, which were the necessary and natural result of his arrest, imprisonment and trial; and in these are included the monies he has proved he paid, or became responsible for to his counsel for their services, and to the guards that were put over him. And in addition to these actual
123 damages, he may, and should have such additional damages, not exceeding the sum of one hundred thousand dollars, as will at once be a compensation to him for all his bodily and mental sufferings, and a deserved and adequate punishment of the defendants.

In conclusion, gentlemen, I adjure you to stand fast by your integrity, by the evidence before you, and by the law delivered to you. Pursue your investigations uninfluenced by what may be the public or the private estimate of your verdict. Hold the scales evenly. Let the trial by jury be magnified, and made still dearer to the hearts of the people in the fearless and faithful administration of your high office, and, as you expect mercy from God, do justice to man.

124 The jury returned a verdict for the defendants.

The plaintiff, by his counsel, except to that part of the charge of the court which directs the jury to return a verdict for the defendants, Robert W. Coltart and J. Withers Clay.

The plaintiff, by his counsel, excepts to the following portion of the charge of the court, to wit:

"And first, I charge you as the law of the land, that if it be established to the satisfaction of a jury that a plaintiff who brings suit into the national courts to recover damages for injuries received at the hands of rebels against the government himself engaged in the treason, he cannot use the courts of the nation to punish his co-conspirators for acts prejudicial to him, but connected with their common crime. To allow this would be to affront the dignity of these tribunals, and invalidate that 'even-handed justice which commends the ingredients of the poisoned chalice to our own lips.'

"If, in the case at the bar, you believe that the acts and speeches of the plaintiff, upon which the defendants rely to prove his complicity with the rebellion, were the result of anything less
125 than a fear that if he did not so speak and act, his life or his liberty or his property would be sacrificed to his silence or his omission, you will find a verdict for the defendants.

"If, on the other hand, you believe that these acts of apparent complicity with the rebellion were performed by the plaintiff under the influence of an honest and rational apprehension that to do otherwise would expose him to persecution or prosecution, or to loss of life, liberty, or property, and that notwithstanding these acts of affiliation with the rebel community in which he lived, he was always at heart honestly and truly loyal to the government of his country, he is entitled to your verdict."

Before the court charged the jury the plaintiff, by his counsel, submitted to the court the following proposition to be given in charge to the jury, to wit:

"If the jury should believe, from the evidence, that the plaintiff was at one time in complicity with the rebellion, and by act and speech aided and abetted the same, but after this, and before the indictment, arrest, imprisonment, and trial complained of, he honestly and in good faith returned to his allegiance to the government of the United States, then he is entitled to recover in this
126 action, not only compensatory but exemplary damages."

But the court refused to charge otherwise than in his charge to the jury hereinbefore set forth, to which action of the court, in refusing to give the above proposition in charge to the jury, the plaintiff, by his counsel, excepts.

The plaintiff, by his counsel, moved the court for a new trial, and in support of the motion relied upon his exceptions in the various rulings of the court on points of evidence, and his exceptions to the portions of his charge to the jury, and upon the refusal of the court to give in charge the special instructions asked, which motion was by the court overruled, and a new trial was refused. To which action of the court the plaintiff, by his counsel, excepts, and tenders this his bill of exceptions, which is signed, sealed, and ordered by

the court to be made a part of the record, which is done. And the plaintiff, by his counsel, prayed an appeal in the nature of a writ of errors to the next term of the Supreme Court of the United States, to be holden in the city of Washington, which to him is granted upon his giving bond and securities for costs, to be approved by the clerk of this court, as required by law in such cases.

Before proposing this bill of exceptions, the plaintiff, by his counsel, proposed to embrace in it only so much of the proof as was necessary to raise the points of exceptions to the rulings of
127 the court upon questions of evidence, and the several matters of law in the charge to the jury to which he excepted, but the defendants, by their counsel, insisted that the bill of exceptions ought to embrace all the proof, and the whole charge of the court; and the court being of the opinion that it was necessary for a proper understanding of his rulings upon the questions of evidence, and his instructions to the jury, to have all the proof before the Supreme Court, and desirous that no misunderstanding might exist as to the whole case, the court directed the plaintiff's counsel to prepare the bill of exceptions accordingly.

[SEAL.] RICHARD BUSTEED,
Judge of the District Court of the United States for the State of Alabama.

128 And afterward, to wit, on the 27th day of November, came the plaintiff, James Hickman, and filed his bond, in words and figures as follows, to wit:

Know all men by these presents, that we, James Hickman, of the city of Nashville, Tennessee, and Edward E. Douglass and Christopher C. Sheats, citizens of the State of Alabama, are held and firmly bound unto Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Matthews, John W. Cooper, James H. Mastin, William Larkin, Enoch Aldridge, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, in the sum of two thousand dollars, to be paid to the said Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Matthews, John W. Cooper, James H. Mastin, William Larkin, Enoch Aldridge, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, their executors or administrators, to which payment to be well truly , we bind ourselves and each of us, jointly and severally and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and [and] dated this the 27th day of November, in the year of our Lord one thousand eight
129 hundred and sixty-seven.

Whereas the above-named James Hickman has prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment in a certain suit wherein the said James Hickman is the plaintiff, and said Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Matthews, John W. Cooper, James M. Mastin, William Larkin, Enoch Aldridge, Samuel Elliott, William Griffin,

Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore are the defendants, in the District Court of the United States for the northern district of Alabama, at Huntsville:

Now therefore, the condition of this obligation is such, that if the above-named James Hickman shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in the presence of Lionel A. Day, and given under our hands this day and date above named.

[SEAL.] JAMES HICKMAN.
[SEAL.] C. C. SHEATS.
[SEAL.] EDWARD E. DOUGLASS.

Subscribed in the presence of—

LIONEL A. DAY,
Cl'k U. S. Dist. Court.

130 And afterward, to wit, on the said 27th day of November. there issued from the clerk's office of the District Court of the United States for said northern district of Alabama a writ of error, in words and figures as follows, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the District Court of the United States for the northern district of Alabama, greeting:

Because in the record and in the proceedings, and also in the rendition of the judgment of a plea, which is in the said court before you, between James Hickman and Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Mathews, John W. Cooper, James H. Mastin, William Larkin, Enoch Aldridge, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore a manifest error hath happened, to the great damage of the said James Hickman, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the
131 record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, with the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the

said Supreme Court, this 27th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

LIONEL A. DAY,
Clerk of the District Court for the Northern District of Alabama.

And afterwards, to wit, on the said 27th day of November, a citation issued in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

To Edward C. Betts, Thomas S. McCalley, Samuel Coltart, Samuel Matthews, John W. Cooper, James M. Mastin, William Larkin, Enoch Aldridge, Samuel Elliott, William Griffin, Stephen W. Harris, Robert W. Coltart, John Withers Clay, and Benjamin T. Moore, greeting:

You are hereby cited and admonished to be and appear at a
132 Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the northern district of Alabama, wherein James Hickman is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 27th day of November, in the year of our Lord one thonsand eight hundred and sixty-seven.

RICHARD BUSTEED,
Judge of the District Court for the Northern District of Alabama.

Which citation is endorsed as follows, to wit:

Edward E. Douglass, marshal for the northern district of Alabama, makes oath that he served the within citation for writ of error in the case of James Hickman *vs.* Edward C. Betts and others, and that he, on this 27th day of November, 1867, delivered a true copy of the same to Richard W. Walker and George A. Gorden, counsel for the defendants. Edward E. Douglass, United States marshal.

133 Subscribed and sworn to before me on this 27th day of November, A. D. 1867.

LIONEL A. DAY,
Clerk United States Dist. Court.

134 THE UNITED STATES OF AMERICA,
Northern District of Alabama, ss:

I, Lionel A. Day, clerk of the District Court of the United States for the district aforesaid, do hereby certify that the foregoing is a true copy and transcript, as appears from the records of this court.

In witness whereof I hereunto set my hand and affix the seal of said court, at my office in Huntsville, in said district, this 10th day of December, A. D. 1867.

[SEAL.]

LIONEL A. DAY,
Clerk said District Court.

SUPREME COURT OF THE UNITED STATES.

JAMES HICKMAN.
Plaintiff in Error.
VERSUS.
EDWARD C. BETTS *et al.*,
Defendants in Error.

Appeal from the District Court of the United States for the Northern District of Alabama.

James Hickman, a citizen of Madison county, Alabama, was residing in Huntsville, in said county, at and prior to the commencement of the late war.

The political sentiment of the community in which he lived was, prior to the beginning of hostilities, strongly in favor of the Union, and James Hickman, like the majority of his fellow citizens was reported to be a Union man.

No sooner, however, had the ordinance of secession passed, and the current of the public mind seemed turned in favor of disunion than James Hickman was found foremost among the most ardent rebels, and energetic in support of an independent Confederacy.

In September 1861, we find him quartermaster of a brigade raised for the Confederate service, and as such "energetic, active and efficient."

Evidence of D. C Humphreys, pp. 27, 28.

In the same year we find him, urging a young gentleman just returned from college to "assist him in getting up a good company for the Confederate service."

Donegan's evidence, p. 38

In the same year he was a candidate for Major-General in the State forces, to be raised for Confederate service, made speeches to induce enlistments, and expressed himself as unqualifiedly Confederate. He visited East Tennessee to rouse the people in favor of the Confederacy; and being about to be chastised for his Confederate sentiments, "placed his back against the wall of the depot, and defied and cursed them all."

White, p. 38.
Smith, p. 39.

He applied to Reagan, the Postmaster-General, whom "he had raised and was proud of," for the position of postmaster at Huntsville.

Woodruff, p. 39.
Bradley, p. 26.

He made speeches, both at home and in East Tennessee, in favor of the Confederacy, raised a company for Confederate service, and was angry that he was defeated for the captaincy. In short, from the day of secession down to the —— day of April, 1862, when the United States troops took possession of Huntsville, he was an ardent, energetic, consistent rebel. From April, 1862, to September, 1862, during which time this country was occupied by United States forces, he made outward show of loyalty to the United States; but to those whom he believed to be still rebel, he protested that "his heart was in the Confederate cause," and that his actions were prompted by a desire to make money.

Johnston, p. 39.
Dement, p. 40.
Winston, p. 41.

In fine, in the language of one of the witnesses, Nick Davis, Esq., "the general impression of the public mind was that Hickman was not trustworthy, and was disposed to make money out of both sides. While Confederates were here Hickman was a good Confederate, and while Federals were here he was a good Federal."

Davis, p. 26.

Upon the withdrawal of the United States forces and the re-occupation of the country by the rebels, in September, 1862, Hickman strove to palliate his conduct, and in a card addressed to "The People of North Alabama," and widely circulated, he presents the proofs of an immaculate Confederate record.

Vide Card, pp. 42, 43.

Notwithstanding this, however, at a term of the District Court of the so called Confederate States, upon testimony which Hickman avows in conversation with one of the witnesses to be amply sufficient, a true bill was found against Hickman for treason against the Confederate States, and upon that indictment he was arrested, tried and acquitted.

Mastin, p. 41.

The defendant, R. W. Coltart, is alleged to have been deputy marshal, and the defendant, Moore, clerk of said court: the defendant, Clay, to have incited the prosecution by editorials in his newspaper: and the remaining defendants to have been grand jurors who found the true bill for treason against Hickman.

Against all of these defendants, the plaintiff, James Hickman, on the 19th day of March, 1866, brought his action in the United States District Court for the Northern District of Alabama, claiming damages for maliciously and without probable cause, having and causing him to be arrested, imprisoned, indicted and tried on the supposed charge of treason. In short, the plaintiff brought his action of trespass on the case against the defendants for malicious prosecution.

Page 3.

All the evidence is embraced in the bill of exceptions. It was believed necessary, both by the Judge who tried the case, and by the counsel for defendants, to do this in order to the proper understanding of the rulings upon questions of evidence, and of the instructions to the jury. The counsel for defendants desired to have the entire evidence set out for the additional reason that they were satisfied that it would thus be made to appear that plaintiff had not been injured, even if the charge to the jury was in any respect erroneous.

The material questions to be considered arise upon the charge of the Court to the jury.

First—All the evidence is set out, and if it appears that the Court might properly have charged the jury that they must find for the defendants, then the plaintiff has not been injured, even if the charge as given states the law incorrectly. Such error being without injury will not work a reversal of the judgment.

Blackwell vs. Patton, 7 Cr. 471.
Campbell vs. Pratt, 2 Peters, 354.
Boardman vs. Reed, 6 Peters, 328.
Chandler vs. Von Roeda, 24 Howard, 225.
Donley vs. Camp., 22 *Ala.*, 659.

The case as submitted to the jury was an action on the *case*. It may be that on the facts stated in the complaint the plaintiff could have brought trespass, and that to maintain that action it would not have been necessary to prove either malice or want of probable cause. But although trespass lies where the plaintiff has been arrested and prosecuted before an illegal tribunal, or

one which has acted without jurisdiction, yet under such circumstances *case* is a concurrent remedy if the proceeding is malicious and unfounded.

1 Chitty Plead., 133, 182–3–4.
Morris vs. Scott, 21 Wend., 281.
Hays vs. Younglove, 7 B. Monroe, 545.
2 Wilson, 302, 376.
2 Greenleaf on Evidence, § 449.
Pippet vs. Hearn, 5 B. and Ald., 634.

The plaintiff here elected to bring *case* not *trespass*. The complaint alleges facts authorizing an action on the *case*. It bears all the earmarks and contains all the averments peculiar to a declaration in case (2 Chitty Pl., 600, 605, 607—11 note; 2 Greenleaf Ev., §§ 452–3), and consequently was treated as such in the Court below, and must be so considered here. To maintain his action in the form which he chose to adopt, it was indispensable for the plaintiff to prove both malice on the part of the defendants and want of probable cause.

Wheeler vs. Nesbitt, 24 Howard, 544.
Vanderbilt vs. Matthews, 5 Duer, 304.
Buckley vs. Smith, 2 Duer, 271.
Brooks vs. Jones, 11 Iredill, 260.
Morris vs. Carson, 7 Cowen, 281.
Stone vs. Crocker, 24 Pickg., 83.
Willans vs. Taylor, 6 Bing., 184.

Now, no proof whatever showing malice on the part of the defendants was introduced. On the contrary, the testimony of James H. Mastin, which is wholly uncontradicted, positively disproves the allegation of malice, and the statement of the plaintiff to Mastin that defendants "could not help finding the indictment on the testimony before them," shows that there was probable cause.

It thus appears that the Court might well have charged the jury that upon the evidence before them the plaintiff could not recover. Consequently this Court will not reverse the judgment even if the charge as given abound in errors. This was one of the considerations, which made it proper that the whole evidence should be set out in the bill of exceptions.

2d. The substance of the charge which the Court gave was, that the Plaintiff was entitled to recover, unless he had himself voluntarily participated in the rebellion.

We insist that if there was any error in this charge it was in

The admission of the plaintiff, therefore, as well as the great historical circumstance of the war, of which the Court will take judicial notice, shows that the act of the defendants in finding an indictment against the plaintiff, was done during the existence of a civil war, and in obedience to the laws of a government in fact, which was the ruling or supreme power of the country, and which had the ability and will to enforce obedience to its commands. This of itself, in the absence of any positive proof of malice, constitutes a sufficient justification for the action of the Grand Jurors. *Quod necessitas cogit defendit.*

Hale, P. C. 54.
3 Phillimore Int. Law, chapters 4, 5, 6, 7 of part 12, pp. 741–2–3.
Ibid, pp. 718–19.
Lawrence's Wheaton Int. L., 522, 580, 653.
U. S. vs. Rice, 4 Wheaton, 246.
U. S. vs. Hayward, 2 Gal. 485.
Grotius' War and Peace, Book 1, ch. 4, § 15.
Foster's Crown L., 188. Ibid, 396—412.
Halleck, Int. L., 792.
1 Campbell's Lives of Chief Justices, 530, 535, 494–6.
Hughes vs. Litsey, Am. Law Register, January, 1866, p. 148.
U. S. vs. Greiver, 24 Law Reporter, 98.
1 Hale's P. C., 104.
Watson vs. Stone, 40 Ala., 451.
Cross vs. Harrison, 16 Howard, 164.
Leitsendorf vs. Webb, 20 Howard, 176.
Fleming vs. Page, 9 Howard, 603.
Ward vs. State, 2 Caldwell, 605.
Venable vs. Curd, 2 Head, 582.
Bell vs. L. and N. R. R. Co., 1 Bush, 404 Ibid, 387.

"When an insurrection, by its continuance and power, takes the form of a *de facto* government, and prescribes and enforces laws over people within its territory, individual rights and obligations undergo an inevitable modification, and the rightful and displaced authority, when it again comes into place, must, in a measure, accommodate its action to circumstances, and consider many things as rightfully done which in a mere insurrection would have no color of legality. This principle is recognised by all civilized nations, has been especially enforced in England by statute, and by the decisions of Courts as early as the reign of Henry VII. Obedience to the *de facto* government established under a usurper has been held not to involve a subject in the guilt of treason to the lawful king." The law is thus stated in

the opinion of Attorney General Stanberry, on the interpretation of the Reconstruction Acts, and it is abundantly supported by authorities *supra*.

The authorities already cited establish beyond the reach of controversy, that the late war was not a mere insurrection, but a territorial civil war, to which most of the rules applicable to foreign wars were rightfully applied, and in which each party was entitled to the rights of belligerents.

2 Black., 666–7–9, 673, 688.
Lawrence's Wheaton, 520, 521, 523–4. Notes.
26 Law Reporter, 539, 541.

It may be admitted that in a civil war the party claiming to be sovereign may exercise sovereign as well as belligerent rights, and that the United States might punish as traitors those engaged in the late rebellion. But in all controversies between private persons, citizens of the same insurrectionary State, the Confederate States must be considered entitled to the customary rights of a belligerent; and an injury resulting from an act done under authority emanating from the Confederate States in the exercise of belligerent rights, cannot constitute a cause of action.

At the time when the acts complained of by the plaintiff were done, the Confederate States held in belligerent occupation the Northern District of Alabama. (Dana's Wheaton, p. 436.) It is therefore important to consider what are the effects of belligerent occupation, and what the rights of the belligerent occupant.

The effects of belligerent occupation by either party to a war, public or civil, and the rights of the belligerent occupant, depend on the laws of war, as these are defined by the law of nations. In a civil war *both* parties are subject to the laws of war.

2 Black., 666, 673, 688.
Lawrence's Wheaton, 520, 521, 523 (note), 524
24 Law Reporter, 151–2–3
American Law Register, January, 1866, p. 153.
26 Law Reporter, 539, 541.

Belligerent occupation, because it excludes the protecting power of the lawful sovereign, suspends temporarily the allegiance of the noncombatant inhabitants to that sovereign, and imposes on them a temporary and qualified allegiance to the occupant.

Halleck, 791.
Lawrence's Wheaton, 525.
United States vs. Rice, 4 Wheaton, 246.
24 Law Reporter, 48, 477.

favor of the plaintiff, and that the facts disclosed by the evidence, exclusive of those relating to the plaintiff's participation in the rebellion, furnish a full defense to the action.

This is not a case between the Government of the United States and a citizen who was guilty of treason or disloyalty during the war. Nor is it a case between a citizen of a loyal State on the one side, and a citizen of an insurrectionary State on the other. It is a suit between parties, all of whom were citizens and residents of the same insurrectionary State, and the object of the suit is to recover damages for acts done during the rebellion, and during the rebel occupancy of such State; and the defendants to the suit were noncombatants, for such must be the presumption in the absence of proof to the contrary, voluntary participation in the rebellion being a violation of legal duty which will not be imputed without proof.

In such a suit the defendants cannot be held responsible for any act done during the rebellion, for which they would not have been liable if the rebellion had been successful.

In such a suit any authority emanating from the Confederate Government, which, in the event of the success of the rebellion, would have protected the defendants, will now protect them to the same extent as if the rebellion had not failed, and the national authority had not been restored.

If the rebellion had succeeded the Grand Jurors would not have been liable to Hickman, no matter how false or malicious the charge, Grand Jurors as well as Judges being exempt from suit for any act done by them as such.

Yates vs. Lansing, 5 Johns., 282, 201–2.
12 Coke Repts., 23–4.
1 Chitty Plead., 78, 181, 184.

Nor (if the rebellion had been successful) could the other defendants have been made liable; for there was no proof of malice, and injury by regular judicial process, without malice, is not a cause of action.

On the trial the Plaintiff admitted "that before and at the time of the indictment, arrest, imprisonment and trial of plaintiff, the Confederate Government enforced the obedience of the people of the Northern District of Alabama to the laws and Government of the Confederate States, and all the power and authority of the Government of the United States were, before and at that time, usurped and exercised by the Confederate Government, the

authority of the Government of the United States being forcibly excluded by the Confederate Government, its Courts closed, and its laws not enforced in said District; that before and at such time the Government of the United States was not affording protection to the people of said District, and was not exercising the functions of Government within the same; that during said time the laws of the Confederate States were enforced and in operation in said District; that the Confederate Congress passed laws establishing a confederate Court for said District; that the Court in which plaintiff was indicted and tried, was held in pursuance of said laws, and that the Grand Jurors were regularly summoned, and would have been subject to penalties and forfeitures if they had failed to attend."

This admission shows the existence of a Government in fact, engaged in a civil war.

Yrissari vs. Clement, 2 Car. and P., 223.
Halleck Int. Law, 791.
Vattel, 97 Prize cases, 2 Black., 665.
Mrs Alexander Cotton, 2 Wallace, 404
Mauran vs. Insurance Co., 6 Wallace, 1.

The language of the Court in the prize cases is clear and emphatic:

"When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the Courts of justice cannot be kept open, *civil war exists*.

2 Black., 667, 669.

And in a later case the Court said:

"It cannot be denied that by the use of (these) unlawful and unconstitutional means, a *government in fact* was erected, greater in territory than many of the old governments of Europe, complete in the organization of all its parts, containing within its limits more than eleven millions of people, and of sufficient resources in men and money to carry on a *civil war*, of unexampled dimensions."

6 Wallace, 14

Again: "We refer to the conduct of the war as a matter of fact for the purpose of showing that the so-called Confederate States were in the possession of many of the highest attributes of government, sufficiently so to be regarded as the *ruling or supreme power of the country*."

6 Wallace, 14.

It is admitted that there is a distinction between occupation by a recognized independent power, and the exclusion of the rightful authority by organized rebellion. But in respect of the doctrine just stated, that distinction does not not apply: The force excluding the legitimate government does not derive any authority from the government which it serves. The citizen does not justify his disobedience on the ground that he is the subject of another power. The principle is that his own government having been driven away, and being no longer able to protect and govern him, cannot, during its absence, claim his obedience.

26 Law Reporter, 542–4.
24 Law Reporter, 98, 99, 101.

Another effect of belligerent occupation is, that all the territory becomes enemy territory, and all the inhabitants enemies.

2 Black., 674, 693.
2 Wall., 419.

It would be most unjust to hold noncombatant inhabitants subject to all the penalties of enemies, but deprived of all the rights of enemies, even the poor right to obey laws they cannot resist.

The belligerent occupant may impose a government on the inhabitants, may establish Courts, create and punish offenses, and do all things necessary to preserve order and prevent anarchy. He may not only organize strictly military tribunals, and punish strictly military offenses, but may establish other tribunals charged with the trial of other offenses, and of controversies involving legal rights, between private persons.

Halleck, 776, 782, 783.
Lawrence's Wheaton, 526 (note).
U. S. vs. Reiter, 4 Amer. Law Register, N. S., 534, 540, 547.

Hence the right of the Confederate government as a belligerent power to establish civil courts was as perfect as its right to organize military tribunals. A District Court to punish traitors was as much an instrument of rebellion as a court martial to punish deserters. The organization of either was plainly the exercise of a belligerent right.

In the case of Dick McCann, decided by Judge Trigg, in the District Court of the United States for Tennessee, it was held that the members of a Confederate court martial, if they acted in

good faith, although they may have given a wrong judgment, are not responsible in a civil action to the injured party.

So grand jurors finding an indictment in a civil court of the Confederate States must, in the absence of positive proof of malice, be exempt from liability to the party indicted.

3d. But the defense did not rest alone upon the justification arising from the enforced obligations of defendants to a power capable of compelling obedience, but upon the fact that the plaintiff had himself aided in establishing the power, for obeying which he sought to make the defendants liable.

If the proposition that, in a suit between citizens of the same insurrectionary State, the fact that the act complained of was done under the authority of the Confederate Government, the ruling or supreme power of the country, is a justification to the party doing it, cannot be maintained as universally true, it is certainly true in every case between such parties, where the plaintiff claiming damages was himself a willing participant in the rebellion. It was only in this qualified form that the proposition was given in the charge of the court below.

To allow a plaintiff who was himself implicated in the rebellion to recover damages of others who have injured him by acts done in furtherance of the rebellion is forbidden by all of the following well settled rules:

First—That a party seeking redress in a court of justice must come with clean hands.

Second—That no action lies for an act done with the assent of the plaintiff, or where the injury arises, in whole or in part, from his fault.

Third—That between wrong doers there can be neither indemnity nor contribution.

The Judge who tried the case only applied these familiar rules when he instructed the jury that "if a plaintiff, who brings suit in the national courts to recover damages for injuries received at the hands of rebels against the government, himself engaged in the treason, he cannot use the courts of the nation to punish his co-conspirators for acts prejudicial to him, but connected with their common crime."

It is a principle of fundamental justice, extending through the entire field of the common law, that a man cannot obtain

legal redress for a wrong, however grievous, unless he is himself free from blame in the matter about which he complains.

Bishop Marr. and Div., § 388 and cases cited.

"All writers upon law agree in this: that no polluted hand shall touch the pure fountains of justice."

Broom's Legal Maxims, 575.
Colburn vs. Patmore, 1 Crompton, Mees and Roscoe, 83.
Poole vs. Wiggins, 3 Bing., 230.
Merritt vs. Stokes, 4 Term. R., 564.

"A person who has himself committed acts declared by law to be criminal will not be permitted to recover from one who has participated with him in the commission of the crime. *In pari delictos potior est conditio defendentis.*"

Colburn vs. Patmore, supra.
Campbell vs. Cambell, 7 Clark & Finelly, 166.
Yates vs. Foot, 12 Johnson, 1.

"The law leaves the parties as it found them. If either has sustained loss by the bad faith of a *particeps criminis*, it is but a just infliction for premeditated fraud. He must not expect that a judicial tribunal will degrade itself by an exertion of its powers by shifting the loss from one to the other, or to equalize the benefits or burthens which have resulted from the violation of law."

Bartle vs. Coleman, 4 Peters, 184.
See, also, Nesmith vs. Sheldon, 4 McLean, 375.
Gray vs. Sims, 3 W. C. C., 276.
Randall vs. Howard, 2 Black, 85.
Fales vs. Mayberry, 2 Gall., 560.
1 Bishop, Cr. L., § 6.
Gregg vs. Wyman, 4 Cushg., 322.

Any person who voluntarily aided the rebellion, thereby contributed to the organization of a power whose force within the territory occupied by it was resistless—and, if in obedience to that power others have injured him, he is without redress. Nor is his claim for damages improved by the fact that he repented of what he had done, *after* the power he assisted in creating had attained such proportions as to become the ruling or supreme power of the country, so that resistance to its commands would have been not only vain but dangerous.

The Confederate District Court was only a portion of the machinery which the plaintiff, in conjunction with his fellow-conspirators, had constructed for the destruction of the Union. It

was one of the instrumentalities used for effecting its purposes by the power which plaintiff had aided to create. The action of plaintiff in aiding the rebellion was voluntary, while that of defendants was, so far as the evidence discloses, compulsory—under pains and penalties of a law, whose behests it would have been folly to resist.

In the language of this Court, in Barth vs. Coleman, *supra*: "Public morals, public justice, and the well-established principles of all judicial tribunals, alike forbid the intervention of courts of justice to lend their aid to purposes like that" of this plaintiff.

In accordance with these views it was held by Judge Trigg, in the case of Park vs. Hamilton, tried in the United States District Court for Tennessee, at Memphis, that a party who was himself implicated in the rebellion has no right of action if his property was seized, or he was otherwise injured, under an order of the rebellious government which he had himself assisted and promoted.

The questions arising upon exceptions to testimony present no difficulty, and it is not necessary to notice them.

Respectfully submitted.

RICHARD W. WALKER,
GEORGE A. GORDON,
Attorneys for Defendants.

Supreme Court of the United States.

(December Term, 1868.)

HICKMAN
vs.
BETTS AND OTHERS. } No. 263.

Error to the Northern United States District Court for Alabama.

This was an action for a malicious prosecution and false imprisonment brought by the plaintiff in error against the defendants.

It is not necessary to state the evidence offered on either side, that being as concisely stated in the transcript as it could be in this brief.

Exceptions were taken by the plaintiff to the rulings of the court below, upon questions of evidence and upon the court's instructions to the jury, and its refusal to grant the one asked by the plaintiff.

It will be contended—

1. That the court erred in its instructions to the jury that they must find a verdict for R. W. Coltart, one of the defendants, there being evidence tending to show that he participated in the wrongs complained of.

2. The court having correctly decided that the defence—that the acts done by the defendants were done under the authority of laws passed by the Confederate government—

could not be maintained, it proceeded to instruct the jury that the plaintiff could not recover unless the jury were satisfied that from the beginning of the rebellion to its final overthrow he had been "always honest in his loyalty to the United States," and refused to give the instruction prayed by the plaintiff, although they should find that the plaintiff "was at one time in complicity with the rebellion, and by act and speech aided and abetted the same, *but after this, and before the indictment, arrest, imprisonment and trial complained of, he honestly and in good faith returned to his allegiance to the Government of the United States,*" then he is entitled to recover.

No authorities will be relied upon than are contained in the brief of the counsel of the defendants in error.

REVERDY JOHNSON,
For Plaintiff in Error.